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Letter dated 22 June 2001 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its tenth special session, which was held at Geneva on 19 June 2001, and its fortieth regular session, which was held from 19 to 21 June 2001.

At its tenth special session the Governing Council adopted decision 124 (S/AC.26/Dec.124 (2001)) concerning the arrangement to provide technical assistance to Iraq in respect of environmental monitoring and assessment claims. The text of the decision is attached (annex I). Decision 124, in conjunction with decision 114, adopted by the Council in December 2000, marks the conclusion of the task assigned by the Security Council to the Governing Council in September last year concerning the review of the procedures of the Compensation Commission.

At the fortieth regular session delegations from Kuwait, Iraq, the Islamic Republic of Iran, Saudi Arabia and Sri Lanka addressed the Council during its opening plenary meeting. The statements of the delegations are being sent with the original of this letter.

During the session the Council considered eight reports and recommendations made by the Panels of Commissioners in the D, E2, E3, E4, F1 and F4 categories of claims. The reports on category D claims (annexes II and IV) concern the review of individual claims for damages above US$ 100,000; the report on category E2 claims (annex VI) concerns the review of claims filed on behalf of corporations and other business entities not incorporated in Kuwait; the report on category E3 claims (annex VIII) concerns the review of non-Kuwaiti construction and engineering claims; the reports on category E4 claims (annexes X and XII) concern the review of Kuwaiti private sector claims; and the report on category F1 claims (annex XIV) concerns the review of governmental claims submitted by the Government of Saudi Arabia. The report on category F4 claims (annex XVI) is the first report of the F4 Panel of Commissioners, and deals with environmental monitoring and assessment claims. The attached tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 31 January to 30 April 2001. The report covers the processing of claims, the withdrawal of claims and the payment of approved claims.

The Council discussed several issues relating to the processing and payment of claims, including the fourteenth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (annex XVIII), and approved corrections to certain category A, C, D and E claims.

The Council considered information provided by the secretariat concerning the implementation of decision 123 of the Council for the processing of overlapping and stand-alone business loss claims in categories C, D and E4. The Council authorized the secretariat to recruit the necessary staff required for the implementation of the decision.

The Council also took note of information provided through the secretariat by the F4 Panel of Commissioners that the F4 environmental claims review programme will require at least until December 2004 for completion. The Council requested the secretariat to keep the Council informed of any necessary changes in the secretariat's work programme.

The Council further considered the previously made requests of the Government of Sri Lanka concerning the reconsideration of over 4,000 individual claims in category A, and the Government of Lebanon concerning the late filing of 16 individual claims in category A. The Council recommended that these requests be further discussed at the September session.

The Council considered and took note of the report of the Executive Secretary on the distribution of payments and transparency, and the return of undistributed funds, and requested the secretariat to continue to inform the Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds. The Council also took note of the information provided by the secretariat concerning the return of undistributed funds to the Commission and the suspension of payment to non-compliant Governments, and the assurance provided by the secretariat regarding the implementation with due care of decision 48 of the Governing Council.

With respect to the payment of claims the Council authorized the secretariat to make the next payment under the third phase of payment pursuant to decision 100 to all claims approved at the fortieth session prior to the expiration of the four-month interval between payments as stated in paragraph 1 (f) of decision 100. Decision 100 also provides for an exceptional priority in payment to successful monitoring and assessment claims, and the Council noted that this provision will result in the full payment of the claims approved by the Council at the current session in the first instalment of F4 claims, and that such priority will not apply to future instalments of F4 claims.

Finally, the Governing Council decided to hold its forty-first session from 25 to 27 September 2001.

(*Signed*) Severre Bergh **Johansen**
President of the Governing Council

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Annex I

Decision concerning the arrangement to provide technical assistance to Iraq in respect of environmental claims before the United Nations Compensation Commission taken by the Governing Council of the United Nations Compensation Commission at its 107th meeting, held on 19 June 2001 at Geneva*

The Governing Council

Decides, in concluding its review of UNCC procedures and pursuant to paragraph 22 of decision 114 (S/AC.26/Dec.114 (2000)), to adopt the conclusions of the Working Group on the provision of technical assistance to Iraq in respect of environmental claims before the UNCC, the text of which is annexed to the present decision.

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* Previously issued as document S/AC.26/Dec.124 (2001).

Annex

ARRANGEMENT TO PROVIDE TECHNICAL ASSISTANCE TO IRAQ IN RESPECT OF ENVIRONMENTAL CLAIMS BEFORE THE UNCC

1. The Governing Council decides to establish the following arrangement ("the Arrangement") to provide technical assistance to the Government of the Republic of Iraq ("Iraq") with respect to claims related to environmental damage and depletion of natural resources ("F4 claims") before the UNCC.

2. The aim of the Arrangement is to facilitate the promotion of legitimate interests of Iraq with respect to "F4" claims, which give rise to particular questions due to their complexity and the limited amount of relevant international practice. It is furthermore aimed at assisting the "F4" Panel of Commissioners in the conduct of its tasks, through ensuring the full development of the facts and relevant technical issues, and in obtaining the full range of views including those of Iraq.

3. The technical assistance will be provided through a number of experts, to be selected freely by Iraq and approved by the Executive Secretary of the UNCC to ensure the necessary professional qualifications and experience. The Executive Secretary will regularly inform the Governing Council, and consult it in cases giving rise to particular questions.

4. The role of the experts will be to assist Iraq in preparing

(a) responses to article 16 reports,

(b) written submissions and oral proceedings before the panel in accordance with article 36 of the Provisional Rules for Claims Procedure ("the Rules"), and

(c) any other communication with the UNCC on "F4" claims.

5. Iraq shall define and propose to the Executive Secretary tasks to be carried out by the experts, for approval of the related expenditures. Reasonable expenditures stemming from this Arrangement shall be covered from the UNCC administrative budget.

6. Payments under this Arrangement will be made directly by the UNCC to the experts. This will provide the necessary control mechanism to ensure

that the funds are spent fully in accordance with the purpose of this Arrangement.

7. The total expenditures under this Arrangement are estimated at USD 3 to 5 million and may not exceed USD 5 million. The Governing Council may revise these figures at a later stage in light of new developments, and may decide to increase or decrease them.

8. The Arrangement is strictly limited to "F4" claims. It cannot be construed as a precedent with regard to any other category of claims before the UNCC, and it does not imply or create any changes to the Rules.

Annex II

Report and recommendations made by the D2 panel of Commissioners concerning part one of the eighth instalment of individual claims for damages above US$ 100,000 (category D claims)*

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* Previously issued as document S/AC.26/2001/9.

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Introduction

1. At its thirtieth session held from 14-16 December 1998 the Governing Council of the United Nations Compensation Commission (the "Commission") appointed the "D2" Panel of Commissioners, comprising Messrs. Kamal Hossain (Chairman), Nabil Elaraby and Isomi Suzuki (the "Panel"). The Panel is one of two Panels appointed to review claims filed by individuals for amounts above USD 100,000 (category "D" claims).

2. This is the second report of the "D2" Panel submitted to the Governing Council pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules").

3. This report contains the determinations and recommendations of the Panel in respect of the part one of the eighth instalment of category "D" claims, comprising 220 claims ("the claims") of the 447 claims in the instalment.

I. OVERVIEW OF THE CLAIMS IN PART ONE OF THE EIGHTH INSTALMENT

4. The 220 claimants in part one of the eighth instalment allege losses aggregating USD 63,802,335.64. Most loss types defined on the category "D" claim form were encountered in the claims. The most significant loss types appearing in the claims were personal and real property losses. The following table sets out the number of claims by submitting entity in part one of the eighth instalment.

Table 1. Summary of claims by submitting entity

Submitting entity	Number of claims
Canada	1
France	2
Germany	1
India	21
Jordan	7
Kuwait	171
Lebanon	1
Pakistan	7

Submitting entity	Number of claims
United Kingdom	1
United States	8
Total	220

II. THE PROCEEDINGS

5. On 25 July 2000, the Panel signed Procedural Order No. 5 in which it gave notice of its intention to complete its review of the claims and to submit its report and recommendations to the Governing Council in two parts, Part one in January 2001 and Part two in July 2001.

6. The Panel met regularly at the Commission's headquarters in Geneva to consider the claims.

7. The Panel has taken into consideration relevant information and views presented by a number of submitting entities and by Iraq in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

8. The Panel has sought to achieve consistency, in so far as is possible, with the verification and valuation procedures adopted by other panels for category "D" and "E" losses. This has been accomplished by adopting the relevant features of related methodologies in the assessment of claims, where appropriate.

III. LEGAL FRAMEWORK

A. Applicable law

9. Pursuant to resolution 687 (1991), the Security Council established Iraq's liability under international law for any direct loss arising as a result of Iraq's unlawful invasion and occupation of Kuwait. Paragraph 16 of Security Council resolution 687 (1991) states (in part) that Iraq:

> "... is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

10. Article 31 of the Rules identifies the law to be applied by panels of Commissioners in their consideration of claims. Specifically, panels are to apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. Where necessary, panels are to apply other relevant rules of international law.

B. Evidentiary requirements

11. Article 35(1) of the Rules provides that:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

12. Article 35(3) provides that claims in categories "D", "E" and "F" must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.

13. In addition, decision 15 of the Governing Council expressly requires "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" with respect to "all types of business losses, including losses relating to contracts, transactions that have been part of a business practice or course of dealing, tangible assets and income producing properties." 1/

14. The Panel has reviewed the claims and made its recommendations by assessing documentary and other appropriate evidence. In addition, the Panel has sought to balance the interests of claimants who had to flee a war zone with the interests of Iraq which is liable only for direct loss, damage or injury caused as a result of Iraq's invasion and occupation of Kuwait.

C. Causation

15. Security Council resolution 687 (1991) establishes Iraq's liability for any "direct" loss arising as a result of its invasion and occupation of Kuwait. The Panel has been particularly concerned to ensure that all losses recommended for compensation are direct losses caused by Iraq's invasion and occupation of Kuwait.

16. In dealing with the issue of causation, the Panel has been guided by Governing Council decision 7, which provides that compensation is available

with respect to any direct loss, damage, or injury (including death) to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage taking or other illegal detention. 2/

17. The Governing Council has confirmed that these guidelines are not intended to be exhaustive. 3/

18. The causation analysis for each claim begins with reference to resolution 687 (1991) of the Security Council, and an assessment of whether the claimed loss is a direct loss resulting from Iraq's invasion and occupation of Kuwait. The Panel has interpreted resolution 687 (1991) in accordance with the guidance provided by relevant decisions of the Governing Council. In each case, the Panel assesses whether the directness requirement has been met based on one of the causal relationships outlined in paragraph 6 of decision 7, or some other causal relationship arising directly from Iraq's invasion and occupation of Kuwait. If a claim or a loss element in a claim fails to meet the directness requirement, the Panel recommends no compensation for that claim or loss element.

19. Additionally, the Panel has considered the decisions of other panels dealing with analogous issues of causation. In particular the Panel has drawn upon and adopted the reasoning applied by the "E2" Panel in its report concerning the second instalment of category "E2" claims. 4/ The Panel has also been guided by paragraph 23 of the report of the "F3" Panel concerning the first instalment of category "F3" claims. 5/

D. The role of the Panel

20. The Governing Council has entrusted three tasks to the Panel. First, the Panel must determine whether an alleged loss falls within the jurisdiction of the Commission and is compensable in principle. Second, the Panel must verify

whether the loss was actually suffered by the claimant. Third, the Panel must determine the amount of any compensable loss suffered by the claimant and recommend an award in respect thereof.

21. Taking into account the evidentiary and causation requirements that must be met by claimants in category "D", and considering the legal principles that must be respected in the valuation of compensable losses, a case-by-case assessment of each claim is required.

22. Throughout the Panel's review of the claims, the Panel has considered numerous factual, legal and valuation issues arising within the individual claims under consideration.

23. In summary, the Panel's objective was to review the claims by applying established principles in a consistent and objective manner.

IV. PANEL DETERMINATIONS IN RESPECT OF DUPLICATE CLAIMS

24. Pursuant to the consideration of the claims, the Panel identified approximately thirty claims which, on a preliminary basis, appeared to constitute duplicates of other category "D" claims.

25. Upon further investigation, the Panel determined that a total of 19 claims would receive no compensation by reason of the duplication by the claimant concerned of the same losses in two or more separate claims.

V. FACTUAL AND LEGAL ISSUES ARISING IN THE DETERMINATION OF THE CLAIMS IN PART ONE OF THE EIGHTH INSTALMENT

26. The Panel was called upon to address numerous factual and legal questions in the determination of the claims. The Panel does not deem it appropriate to compile an exhaustive list of those issues and the determinations in respect of each. Instead, the Panel has elected to limit itself to three specific issues, which are dealt with below.

A. Losses incurred by a claimant as a result of the forced sale of real property

27. A claimant sought compensation in respect of the difference in what he contended was the true market value and the realised price of the real property on which claimant's home was built. The claimant had been resident in Kuwait at the time of its invasion and occupation. He was unable to return expeditiously to his home country and alleged that he was forced against his will to remain in Kuwait. As a consequence thereof, the claimant alleged that he was unable either to earn an income or to service the monthly mortgage payments. The bank concerned was alleged to have applied pressure upon the

claimant to sell the property while he was in Kuwait and repay the mortgage from the proceeds of the sale. The claimant managed, through family members, to sell the property, but contends that the sale price was unfavourable due to the forced nature of the sale.

28. The Panel concluded that the loss alleged did not constitute a direct loss, damage or injury as contemplated in paragraph 16 of Security Council resolution 687 (1991) because it was too remote. On this basis the Panel recommends that no compensation be awarded.

B. Losses incurred as a result of temporary psychological injuries

29. Two claimants sought compensation in respect of losses arising from temporary psychological injuries. Both claimants had been passengers aboard a British Airways flight en route to Malaysia, which had landed in Kuwait on 2 August 1990. The two were detained as hostages by Iraqi forces, the first for thirty days and the second for ninety days. Both claimants alleged that their detention led to psychological injury, which had in turn impaired their respective abilities to perform their jobs. As a result of these facts, the claimants had become unemployed. The loss of income suffered by both was alleged to have occurred as a consequence of Iraq's invasion and occupation of Kuwait.

30. The Panel paid regard to similar cases decided by the "D1" Panel in assessing the compensability of these claims. Based upon these decisions, the Panel concludes that the first claim is not compensable. The reason for this is that the claimant had not provided sufficient evidence to establish the fact of injury. The second claimant on the other hand had demonstrated the fact of injury with credible medical evidence. The Panel determines that the appropriate award, making adjustments for evidentiary deficiencies, is the equivalent of ten months of lost salary.

C. Claim for future loss of earnings on behalf of minor child

31. A claimant sought compensation of USD 500,000 in respect of future loss of earnings on behalf of her minor son, aged nine years at the time of Iraq's invasion and occupation of Kuwait. The basis of the claim was that the son would have earned a salary of USD 7,500 per month had he not been forced to leave school in Kuwait and return to his home country. The USD 500,000 was sought in order to produce an equivalent income of USD 7,500 per month for the rest of the son's anticipated lifetime.

32. The Panel finds that the claimant had not demonstrated that a compensable loss had been suffered. Even if such a loss were to have been established, the Panel finds that it would not have been a direct loss

resulting from Iraq's invasion and occupation of Kuwait. The Panel accordingly recommends that no compensation be awarded.

VI. CROSS CATEGORY ISSUES

A. Overlap with category "E4" claims

33. The Panel has initiated an investigation of the nature and scope of the potential overlap of claims filed by individual claimants in category "D" and claims for compensation in respect of the same losses filed by Kuwaiti corporate claimants in category "E4". This potential claims overlap issue is being assessed in co-operation and consultation with the "D1", "E4" and "E4A" Panels. Pending the results of the investigation, and the receipt of guidance from the Governing Council, the Panel has decided to defer three claims in the eighth instalment submitted by Jordanian shareholders of Kuwaiti corporate entities with limited liability where a potentially competing "E4" claim has been filed.

B. Deductions of category "A", "B" and "C" awards

34. Recommended awards in respect of the claims are reported after deduction of category "A", "B" and "C" approved awards.

35. In some cases, the deduction of a category "C" award constitutes a deduction of a pro-rated amount. This occurs where there are multiple category "C" loss elements, and the "C" award was capped at USD 100,000. In such cases, the "C" award is pro-rated back to the "C" loss elements to reach an amount that can be deducted from the corresponding category "D" award.

VII. OTHER ISSUES

A. Currency exchange rate

36. The Commission issues its awards in United States dollars. The Panel accordingly determines the appropriate exchange rate applicable to claims expressed in other currencies.

37. The Panel finds that it is not possible to calculate the exchange rate separately for each individual claim. The Panel accordingly adopts the reasoning of the "D1" Panel on this issue. 6/

38. For claims stated in Kuwaiti dinars, the currency exchange rate to be applied is the rate of exchange in effect immediately prior to Iraq's invasion and occupation of Kuwait (i.e., 1 August 1990) for converting Kuwaiti dinars into United States dollars.

39. For claims stated in currencies other than Kuwaiti dinars or United States dollars, the currency exchange rate to be applied is the average rate in effect for the month of August 1990 for converting those currencies into United States dollars as indicated in the United Nations Monthly Bulletin of Statistics. 7/

B. Interest

40. In decision 16, the Governing Council specified that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award."

41. For category "D" loss types other than individual business losses, the "D1" Panel has decided that "the date the loss occurred" under Governing Council decision 16 is a single fixed date, being 2 August 1990 (the date of Iraq's invasion and occupation of Kuwait). The Panel adopts this decision.

42. Category "D" claims for loss of business income are for losses of income that would have been earned over a period of time. As such, an interest start date of 2 August 1990 for such losses would result in over-compensation for claimants. The Panel accordingly adopts the midpoint of the period for which loss of business income claims have been recommended for compensation as the date of loss for the purpose of calculating interest. 8/

C. Claim preparation costs

43. A number of category "D" claimants have made claims for claim preparation costs incurred by them, either in amounts specified on the claim form or in general terms.

44. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to compensation for claim preparation costs.

VIII. RECOMMENDED AWARDS

45. Table 2 hereto lists the awards recommended by the Panel for each Government and international organisation with claimants included in part one of the eighth instalment. Each Government and international organisation will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the table below, the Panel recommends a total of USD 34,906,517.12 against a total claimed amount of USD 58,204,370.11 for the 216 claims resolved in this instalment.

Table 2. Recommended awards by submitting entity

Country	Number of claims recommended for payment	Number of claims not recommended for payment a/	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Canada	-	1	44,000.00	nil
France	1	1	183,375.62	21,701.52
Germany	1	-	247,743.28	18,676.00
India	4	17	4,200,357.14	24,661.58
Jordan	2	2 (3)	1,929,894.17	242,941.51
Kuwait	169	2	49,745,727.36	34,069,358.34
Lebanon	1	-	247,550.00	150,910.00
Pakistan	5	2	1,167,221.55	184,026.27
United Kingdom	1	-	45,739.54	22,195.04
United States	6	2 b/	392,761.45	172,046.86
Total	190	27 (3)	58,204,370.11	34,906,517.12

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a/ Numbers in parentheses represent claims that have been deferred.

b/ Includes one withdrawn claim.

Geneva, 30 January 2001

(Signed) K. Hossain
Chairman

(Signed) N. Elaraby
Commissioner

(Signed) I. Suzuki
Commissioner

Notes

1/ S/AC.26/1992/15, ("decision 15"), paras. 5 and 10.

2/ S/AC.26/1992/7, ("decision 7"), para. 6.

3/ Decision 7, para. 6 and decision 15, para. 6.

4/ "Report and recommendations made by the panel of Commissioners concerning the second instalment of 'E2' claims", S/AC.26/1999/6.

5 "Report and recommendations made by the panel of Commissioners concerning the first instalment of 'F3' claims", S/AC.26/1999/24.

6/ "Report and recommendations made by the panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category 'D' claims)", S/AC.26/1998/1, paras. 61-63.

7/ Vol. XLV No. 4, April 1991 (ST/ESA/STAT/SER.1/220).

8/ This is consistent with the practice of other panels; see for example the "Report and recommendations made by the panel of Commissioners concerning the first instalment of 'E4' claims", S/AC.26/1999/4, para. 230.

Annex III

Decision concerning part one of the eighth instalment of individual claims for damages above US$ 100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning part one of the ninth instalment of individual claims for damages above USD 100,000 (category "D" claims), covering 220 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country or international organization, based on the recommendations contained in paragraph 45 of the report, are as follows:

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* Previously issued as document S/AC.26/Dec.125 (2001).

1/ The text of the report appears in document S/AC.26/2001/9 (annex II above). In conformity with the provisions on confidentiality in the Rules (article 30, paragraph 1, and article 40, paragraph 5), information concerning the amount to be paid to each individual claimant will not be made public, but will be provided to each respective Government or international organization separately.

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Canada	-	1	44,000.00	nil
France	1	1	183,375.62	21,701.52
Germany	1	-	247,743.28	18,676.00
India	4	17	4,200,357.14	24,661.58
Jordan	2	2	1,929,894.17	242,941.51
Kuwait	169	2	49,745,727.36	34,069,358.34
Lebanon	1	-	247,550.00	150,910.00
Pakistan	5	2	1,167,221.55	184,026.27
United Kingdom	1	-	45,739.54	22,195.04
United States	6	1	392,761.45	172,046.86
Total	190	26	58,204,370.11	34,906,517.12

3. Notes that no recommendations have been made for four claims referred to in paragraph 33 and in table 2 of the report,

4. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

5. Recalls that when payments are made in accordance with decision 100 and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments and international organizations shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government and international organization.

Annex IV

Report and recommendations made by the D1 Panel of Commissioners concerning part one of the ninth instalment of individual claims for damages above US$ 100,000 (category D claims)*

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* Previously issued as document S/AC.26/2001/10.

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Introduction

1. This is the eleventh report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above USD 100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of part one of the ninth instalment claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 31 July 2000.

2. The Panel divided the ninth instalment, comprising 522 claims, into two parts. In part one of the ninth instalment, there are 244 claims. Part two of the ninth instalment consists of 278 claims. Part two includes claims requiring further development and a small number of claims for amounts over USD 10 million, which have been designated as "unusually large or complex" claims within the meaning of Article 38(d) of the Rules. The Panel will complete its review of part two of the ninth instalment within twelve months of 31 July 2000.

3. The Panel began its review of the ninth instalment on 31 July 2000. The Panel held regular meetings at the Commission's headquarters in Geneva to consider the claims.

4. The claims in part one of the ninth instalment are comprised of all loss types that can be claimed in category "D" except D2 and D3 claims. 2/ This is the first report of the Panel in which it has applied the methodology for D8/D9 losses. The following table sets out the number of claims by submitting entity in part one of the ninth instalment.

Submitting entity	Number of claims
Australia	3
Canada	4
Germany	2
India	24
Jordan	32
Kuwait	145
Netherlands	1
Pakistan	1

Submitting entity	Number of claims
Slovenia	1
Sudan	8
Sweden	1
Syrian Arab Republic	3
United Kingdom	9
United States	7
UNDP Washington	2
UNRWA GAZA	1
Total	244

I. BACKGROUND

A. Background information

5. In reviewing the claims in part one of the ninth instalment, the Panel has taken into account the factual background relating to Iraq's invasion and occupation of Kuwait, as set out in detail in its reports on part one and part two of the first instalment of category "D" claims. 3/

6. The Panel has also taken into consideration other relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules. In addition, the Panel has considered information and views presented by the Government of the Republic of Iraq and other Governments in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

B. General legal framework

7. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's report and recommendations concerning part one of the first instalment of category "D" claims. 4/

C. Applicable evidentiary standard

8. The evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the report and recommendations concerning part one of the first instalment and chapter II of the report and recommendations concerning part two of the first

instalment. 5/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 6/ As with previous instalments, the Panel has reviewed the claims in part one of the present instalment and made its recommendations by assessing documentary and other appropriate evidence, as well as by balancing the interests of claimants who had to flee a war zone with the interests of the Government of the Republic of Iraq which is liable only for any direct loss, damage or injury as a result of Iraq's invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN THE APPLICATION CLAIMS

9. Some of the claims in this instalment raise new issues that were not dealt with in the Panel's previous reports. These new issues and the Panel's recommendations are set out below.

A. D1(mental pain and anguish) issue: claim for forced hiding

10. The Panel considered two claims involving claimants who fled from Kuwait to Amman by way of Baghdad. The claimants stated that they were forced to hide at night to avoid being bombed by Allied Coalition Forces' aircraft. The Panel has previously found that in order to obtain compensation for forced hiding, a claimant must demonstrate that the forced hiding was on account of a "manifestly well-founded fear." 7/ The Panel determined that such a fear must be "a fear based upon clear indications that Iraqi authorities were seeking to kill or detain the individual in question or some group of which he or she was a member." 8/ The Panel finds that hiding from Allied Coalition Forces' aircraft does not satisfy that requirement, and therefore recommends that no compensation be awarded for these claims.

B. D8/D9(business losses) issue: valuation of fishing boats

11. The Panel considered the question of the valuation of boats under the D8/D9 methodology, belonging to fishermen who operated as sole traders on a cash basis. Many of the types of boats included in the claims do not appear in the Standard Depreciation Table attached to the D8/D9 methodology.

12. The Panel adopts the following method of valuation:

(a) A useful life of 20 years for all fishing boats, with depreciation on a straight-line basis that is consistent with the D8/D9 methodology.

(b) A certificate issued by the fisherman's union, which confirms the fisherman's average monthly income, is acceptable as sufficient evidence for the purpose of the evidence score, in the absence of audited financial accounts.

(c) A default value of USD 1,730.10 per boat, after depreciation is be adopted where the boat has reached the end of its useful life.

III. PANEL DETERMINATIONS ON OTHER CLAIMS IN PART ONE OF THE NINTH INSTALMENT

A. Jurisdictional issues

13. Several claims were submitted for losses incurred outside the period 2 August 1990 to 2 March 1991 (the "jurisdictional period"). The Panel considered a claim for D5(securities) losses in respect of a promissory note dated 10 October 1985. The note was assigned to the claimant in 1986, and the maturity date of the note was extended from 1 October 1988 to 1 October 1992. The claimant was unable to recover under the note, and asserted a D5 claim for loss of securities. The Panel notes that the obligation to pay the note did not arise until 1 October 1992, and finds that the claimant has not proved that the claimed loss was a direct loss resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded.

B. D4(personal property) and D(other) issues: claims arising from property confiscation

14. A claimant sought compensation for personal property confiscated by Iraqi border guards. The claimant alleged that while fleeing Kuwait for Jordan, through Iraq, on 28 August 1990, he had in his possession Iraqi dinars and gold. He was arrested by Iraqi authorities, who confiscated the currency and gold, and imprisoned him. The claimant sought compensation under D4(PP) for the confiscated gold and under D(other) for the confiscated currency. The Panel having considered the extensive, official Iraqi evidence of the confiscation of the gold and currency, determines that the loss of property is a direct loss resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that the claimant be compensated for the confiscated property.

C. D5(loss of securities) issues

15. Some claimants sought compensation for loss of value of shares which, they claim, was the result of Iraq's invasion and occupation of Kuwait. One claimant held shares in two entities, which lost value from the time of Iraq's invasion of Kuwait to May 1992, when he received a settlement in respect of his shares. He claimed for the difference between the settlement amount received and the amount he claims the shares were worth as at 2 August 1990. The claimant asserted that the loss in the value of his shares was a direct result of Iraq's invasion and occupation of Kuwait.

The Panel finds that the claimant has failed to establish that the alleged loss in the value of the shares was a direct loss resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded.

16. Another claimant sought compensation for losses in investment funds. He asserted that he could not redeem his shares during Iraq's invasion and occupation of Kuwait even though their value was falling. When the claimant arrived in the United Kingdom, he could not sell his shares because his accounts had been frozen. In December 1991, he was able to sell some of his shares but at a loss. He also asserted that had the invasion and occupation not occurred, his investments would have risen in value. The Panel concludes that the claim is too speculative in nature and the directness requirement is not satisfied. Therefore, the Panel recommends that no compensation be awarded.

D. D5(loss of bank account) issue

17. A claim was submitted for the loss of a bank account in a Kuwaiti exchange house. Several months before Iraq's invasion and occupation of Kuwait, the claimant attempted to withdraw money from his accounts but was unable to do so since the exchange house had closed. The claimant alleged that he commenced legal proceedings against the exchange house to recover his money but the legal proceedings were cancelled by the Government of Kuwait at the end of 1992. The Panel finds that there is no causal link to Iraq's invasion and occupation of Kuwait as the money in the account was lost prior to the invasion. Accordingly, the Panel recommends that no compensation be awarded.

E. D6(mental pain and anguish) issue

18. A claimant and his family left Kuwait on 6 September 1990 and moved to Egypt. The claimant's Egyptian visa prohibited him from working. As a result of his inability to work in Egypt, the claimant submitted a D6(MPA) claim alleging that he was deprived of all economic resources. The Panel finds that the claimant's inability to find employment in Egypt was not directly linked to Iraq's invasion and occupation of Kuwait, but was due to the inability to obtain a work permit. Accordingly, the Panel recommends that no compensation be awarded.

F. D6(loss of salary) issue

19. A claimant submitted a claim for loss of income and other employment benefits. He alleged that he was forced to resign from his employment in the United Arab Emirates on 31 December 1990, and asserted that his employer's request for his resignation was politically motivated and based on his nationality. The Panel finds that the loss is not a direct loss

resulting from Iraq's invasion and occupation of Kuwait. Therefore, the Panel recommends that no compensation be awarded.

20. A director of a company submitted a claim under D6(loss of salary) for loss of a profit incentive payment for the 1989/1990 financial year. The claimant asserted that he was entitled to an annual "profit incentive" based on the company's trading figures for that financial year. The Panel notes that the company continued to trade after the liberation of Kuwait and the claimant returned to work with the company on 4 July 1991. The company has also filed a category "E" claim for, inter alia, loss of profit with the Commission. The Panel determines that the claimant is in a position to recover any amounts which may be owing to him directly from the company. Accordingly, the Panel recommends that no compensation be awarded.

IV. CROSS CATEGORY ISSUES

21. Recommended awards in respect of claims in part one of this instalment are reported net of deductions of category "A", "B" and "C" approved awards made to the same claimants. 9/

V. RECOMMENDATIONS

22. The Panel extensively reviewed individual claims, examined the application of the methodologies, and satisfied itself that the appropriate methodologies have been applied to the claims in part one of the instalment.

A. Awards by submitting entity

23. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in part one of the ninth instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, the Panel recommends a total of USD 25,615,019.69 against a total claimed amount of USD 47,888,651.37

B. Interest and exchange rates

24. A number of claimants in part one of this instalment filed claims in category "D" specifically for interest on their category "C" or "D" claims. As noted by the Panel in its report and recommendations on part one of the first instalment, interest will be awarded in accordance with Governing Council decision 16. 10/

C. Article 41 corrections to previously reported claim awards

25. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel recommends approval of the corrections as described in the following paragraphs. 11/ A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the submitting entities affected.

1. Third instalment correction

26. One claim that was approved in the third instalment requires correction, as an award for claimant's D4(motor vehicle) losses was inadvertently excluded.

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Canada	3	1	82,354.67
Total		1	82,354.67

2. Part one of the fourth instalment correction

27. One claim approved in part one of the fourth instalment requires correction as the claimant made claims for separate and distinct employment losses in category "C" and in category "D", but due to a computational error the claimant's C6(loss of salary) award was deducted from his D6(loss of salary) award.

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Jordan	4/1	1	6,264.72
Total		1	6,264.72

3. Fifth instalment corrections

28. One claim approved in the fifth instalment requires correction as a consequence of an article 41 correction applied to the related category "C" award. 12/ The original category "C" award was deducted from the award for a related loss in category "D". The article 41 correction to the category "C" claim requires that a revision be made to the award for the related loss in category "D".

Country	Instalment	Number of claims affected	Amount of net effect (USD)
India	5	1	16,903.83
Total		1	16,903.83

29. Another claim approved in the same instalment requires correction due to a typographical error whereby the amount claimed was inserted instead of the amount recommended. 13/

Country	Instalment	Number of claims affected	Amount of net effect (USD)
India	5	1	(1,991.06)
Total		1	(1,991.06)

4. Changes to submitting entity reports by instalment

30. Pursuant to the corrections noted above in paragraphs 26-29, the changes to the submitting entity awards by instalment are as follows:

Instalment	Submitting entity	Previous recommended award (USD)	Corrected recommended award (USD)
3	Canada	252,031.36	334,386.03
4/1	Jordan	1,857,575.62	1,863,840.34
5	India	5,101,591.40	5,116,504.17

D. Submission through the Executive Secretary to the Governing Council

31. The Panel respectfully submits this report pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 31 January 2001

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M.C. Pryles
Commissioner

Annex

SUMMARY RECOMMENDATIONS OF PART ONE OF THE NINTH INSTALMENT OF CATEGORY "D" CLAIMS

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Australia	3	0	286,940.21	118,902.21
Canada	4	0	702,051.95	226,629.11
Germany	1	1	157,350.00	41,093.40
India	22	2	5,174,545.89	691,799.39
Jordan	22	10	8,740,970.92	955,920.95
Kuwait	142	3	28,432,154.78	22,598,358.78
Netherlands	1	0	145,036.59	25,293.00
Pakistan	1	0	19,591.70	14,290.24
Slovenia	1	0	30,082.00	26,775.38
Sudan	7	1	1,162,176.98	210,636.40
Sweden	1	0	3,559.74 a/	6,700.00
Syrian Arab Republic	2	1	534,003.19	87,773.18
United Kingdom	9	0	1,375,130.46	386,768.71
United States of America	7	0	508,536.80	154,013.85
UNDP Washington	1	1	428,606.67	29,722.72
UNRWA Gaza	1	0	187,913.49	40,342.37
Total	225	19	47,888,651.37	25,615,019.69

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a/ Claim included D1(MPA) losses, for which claimed amounts are not specified.

Notes

1/ S/AC.26/1992/10.

2/ In part one of the first instalment of category "D" claims, the Panel developed methodologies for the following loss types: D1(money); D1(mental pain and anguish ("MPA"); D3(death); D4(motor vehicles); D6(loss of income); D10(payment and relief to others); and D10(other). A full description of the methodologies is set out at paragraphs 103-380 of the "Report and recommendations made by the panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/1998/1). The Panel developed methodologies for the following loss types in part one of the second instalment: D2(personal injury) and D5(loss of bank accounts, stocks and other securities). These methodologies are described in the "Report and recommendations made by the panel of Commissioners Concerning part one of the second instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/1998/15), at paragraphs 30-57. The Panel developed the methodology for D7(real property) losses in part two of the fourth instalment. This methodology is described in the "Report and recommendations made by the panel of Commissioners concerning part two of the fourth instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/2000/11), at paragraphs 30-68. The "D2" Panel of Commissioners developed the methodology for D8/D9(business loss) claims, which is described in the "Report and recommendations made by the panel of Commissioners concerning the sixth instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/2000/24). The methodologies for resolving all of the losses in category "D" have now been developed.

3/ See in particular chapter II of the First Report and chapter IV of the "Report and recommendations made by the panel of Commissioners concerning part two of the first instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/1998/3).

4/ S/AC 26/1998/1.

5/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[S]ince … [category D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(1) and (3) of the Rules.

6/ S/AC.36/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

7/ See para. 166 of S/AC.26/1998/1.

8/ See para. 147 of S/AC.26/1998/1.

9/ See paragraph 21 of the "Report and recommendations made by the panel of Commissioners concerning part one of the fourth instalment of individual claims for damages above US$100,000 (category 'D' claims)" (S/AC.26/1999/21).

10/ Paragraph 1 of decision 16 (S/AC.26/1992/16) states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." See also paragraphs 64-65 of the report for part one of the first instalment (supra note 2).

11/ Article 41 states that:

"1) Computational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council.

2) The Governing Council will decide whether any action is necessary. If it is determined that a correction must be made, the Governing Council will direct the Executive Secretary as to the proper method of correction."

12/ Various corrections to category "C" claims were approved in the Eighth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1999/25), the Ninth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2000/10) and the Tenth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2000/14).

13/ S/AC.26/1999/12.

Annex V

Decision concerning part one of the ninth instalment of individual claims for damages above US$ 100,000 (category D claims) taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning part one of the ninth instalment of individual claims for damages above USD 100,000 (category "D" claims), covering 244 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country or international organization, based on the recommendations contained in the annex to the report, are as follows:

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* Previously issued as document S/AC.26/Dec.126 (2001).

1/ The text of the report appears in document S/AC.26/2001/10 (annex IV above). In conformity with the provisions on confidentiality in the Rules (article 30, paragraph 1, and article 40, paragraph 5), information concerning the amount to be paid to each individual claimant will not be made public, but will be provided to each respective Government or international organization separately.

Country or international organization	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed(USD)	Amount of compensation recommended (USD)
Australia	3	-	286,940.21	118,902.21
Canada	4	-	702,051.95	226,629.11
Germany	1	1	157,350.00	41,093.40
India	22	2	5,174,545.89	691,799.39
Jordan	22	10	8,740,970.92	955,920.95
Kuwait	142	3	28,432,154.78	22,598,358.78
Netherlands	1	-	145,036.59	25,293.00
Pakistan	1	-	19,591.70	14,290.24
Slovenia	1	-	30,082.00	26,775.38
Sudan	7	1	1,162,176.98	210,636.40
Sweden	1	-	3,559.74	6,700.00
Syrian Arab Republic	2	1	534,003.19	87,773.18
United Kingdom	9	-	1,375,130.46	386,768.71
United States	7	-	508,536.80	154,013.85
UNDP Washington	1	1	428,606.67	29,722.72
UNRWA Gaza	1	-	187,913.49	40,342.37
Total	225	19	47,888,651.37	25,615,019.69

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. Recalls that when payments are made in accordance with decision 100 and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Governments and international organizations shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government and international organization.

Annex VI

Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of E2 claims*

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* Previously issued as document S/AC.26/2001/11.

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Table 1. Governing Council decisions referred to in the present report

Decision No.	Title	Document No.
7	Criteria for additional categories of claims	S/AC.26/1991/7/Rev.1
9	Propositions and conclusions on compensation for business losses: Types of damages and their valuation	S/AC.26/1992/9
10	Provisional rules for claims procedure	S/AC.26/1992/10
13	Further measures to avoid multiple recovery of compensation by claimants	S/AC.26/1992/13
15	Compensation for business losses resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause	S/AC.26/1992/15
16	Awards of interest	S/AC.26/1992/16

Table 2. List of Panel reports and recommendations referred to in the present report

Short name	Title	Document No.
A(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of claims for departure from Iraq or Kuwait (category "A" claims)	S/AC.26/1994/2
C(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)	S/AC.26/1994/3
Egyptians Workers' Claims Report	Report and recommendations of the Panel of Commissioners concerning the Egyptian Workers' Claims (Jurisdictional phase)	S/AC.26/1995/R.20 rev. 1
D1(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of individual claims for damages above USD 100,000 (category "D" claims)	S/AC.26/1999/9
E2(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims	S/AC.26/1998/7
E2(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E2" claims.	S/AC.26/1999/6
E2(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E2" claims	S/AC.26/1999/22
E2(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E2" claims	S/AC.26/2000/2
E2(5) report	Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of "E2" claims	S/AC.26/2000/17
E2(6) report	Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of "E2" claims	S/AC.26/2000/R.48
E3(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E3" claims	S/AC.26/1998/13
E3(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E3" claims	S/AC.26/1999/14
E4(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E4" claims	S/AC.26/1999/4

Short name	Title	Document No.
F1(1.1) report	Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by Governments and International Organizations (category "F" claims)	S/AC.26/1997/6
F2(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "F2" claims	S/AC.26/2000/26
F3(2) report	Report and recommendations made by the Panel of Commissions concerning the second instalment of "F3" claims	S/AC.26/2000/R.40

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission"), at its twenty-first session in 1996, appointed the present Panel of Commissioners, composed of Messrs. Bernard Audit (Chairman), José María Abascal and David D. Caron (the "Panel" or "E2 Panel") to review "E2" claims. These claims were submitted by non-Kuwaiti corporations, public sector enterprises and other private legal entities (excluding oil sector, construction/engineering, export guarantee/insurance and environmental claimants). This report contains the Panel's recommendations to the Governing Council, pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), concerning the seventh instalment of "E2" claims.

2. The present instalment consists of 64 claims submitted by corporations primarily operating in the fields of telecommunications, publishing, advertising and military supply. 1/ These claims were selected by the secretariat of the Commission ("the secretariat") from the "E2" claims on the basis of criteria that include (a) the date of filing with the Commission, (b) the claimant's type of business activity, and (c) the type of loss claimed. The instalment also includes claims from corporations engaged in the import-export trade, manufacturing, banking and insurance services; seven of these claims were transferred from the fifth instalment of "E2" claims to the present instalment in order to allow the Panel to consider responses from the claimants and the Government of the Republic of Iraq ("Iraq") to the Panel's requests for comments and further information. 2/ The procedure used by the Panel in processing the claims is described in section I below.

3. The role and tasks of a panel of Commissioners, the applicable law and criteria, the liability of Iraq and a description of the applicable evidentiary requirements have been stated in detail in this Panel's report and recommendations concerning the first instalment of "E2" claims. 3/ Within this framework, three tasks have been entrusted to the Panel in the present proceedings. First, the Panel must determine whether the various types of losses alleged by claimants are, in principle, compensable before the Commission and, if so, the appropriate criteria for the valuation of compensation. Second, it must verify whether the losses that are in principle compensable have in fact been incurred by a given claimant. Third, the Panel must value those losses found to be compensable and

actually incurred and recommend awards thereon. These tasks are addressed in sections II to III. Certain incidental issues are discussed in section IV, followed by the Panel's recommendations in section V.

I. PROCESSING OF THE CLAIMS/PROCEDURAL MATTERS

4. Pursuant to article 16 of the Rules, the Executive Secretary of the Commission reported the significant new legal and factual issues raised by the claims in his thirtieth report dated 17 February 2000 ("article 16 report"). Pursuant to paragraph 3 of article 16, a number of Governments, including the Government of the Republic of Iraq, submitted their information and views on the Executive Secretary's report. These responses were transmitted to the Panel pursuant to paragraph 1 of article 32 of the Rules and were considered by the Panel in the course of its deliberations.

5. The secretariat made a preliminary assessment of the claims in order to determine whether each claim met the formal requirements established by the Governing Council in article 14 of the Rules. As provided by article 15 of the Rules, deficiencies identified were communicated to the claimants in order to give them the opportunity to remedy those deficiencies.

6. The Panel was presented with the claims by the Executive Secretary pursuant to article 32 of the Rules on 14 January 2000, and was briefed upon them by the secretariat. In a procedural order of the same date, the Panel classified the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules, in view of the variety and complexity of the issues raised, and the volume of documentation submitted with the claims.

7. Given the large number of claims under review, the volume of supporting documentation submitted with the claims, and the complexity of the verification and valuation issues, the Panel requested expert advice pursuant to article 36 of the Rules. This advice was provided by accounting and loss adjusting consultants (the "expert consultants") retained to assist the Panel.

8. A preliminary review of the claims was undertaken by the secretariat and the expert consultants in order to identify any additional information and documentation that would assist the Panel in properly verifying and valuing the claims. After consultation with the Panel, and pursuant to article 34 of the Rules, notifications were dispatched to the claimants ("article 34 notifications"), in which claimants were asked to respond to a series of questions concerning the claims and to provide additional documentation. Where the claimants provided information in response to the article 34 notifications, this was also considered by the Panel in its determination of the claims.

9. In addition, in connection with the claims submitted by State telecommunications agencies, the Panel undertook its own research into the functioning of the international telecommunications industry. To this end, the Panel requested the secretariat to gather information on a number of issues relevant to the claims and also obtained expert assistance from a specialist of the International Telecommunications Union.

10. In a second procedural order dated 14 January 2000, the Panel instructed the secretariat to transmit to Iraq the documents filed by the claimants for 21 claims: (1) based on letters of credit issued by Iraqi banks; (2) involving bilateral agreements with the Government of Iraq; (3) or relating to transactions with an Iraqi party in respect of which, the Panel considered Iraq's comments would facilitate its review of the claim. Iraq was invited to submit its comments on these claims and such documentation, as well as to respond to questions posed by the Panel by 17 July 2000. Iraq did so on 22 August 2000. The comments and responses of Iraq were nonetheless considered by the Panel as part of its review of the claims, since such consideration did not delay the Panel's completion of its review and evaluation of the claims within the time period provided for under the Rules.

11. In verifying the claims, valuing the alleged losses, and determining the appropriate amount of compensation, if any, the Panel considered the claim files and also claim-specific reports prepared by the expert consultants under the Panel's supervision and guidance. These reports were based upon documents submitted by each claimant, including their responses to the article 34 notifications, as well as Iraq's comments and documents filed in response to the Panel's second procedural order. The Panel applied the procedures and methods described in its previous reports in verifying and valuing the losses alleged. 4/ Where necessary, the Panel adapted these procedures and methods to take into account the nature of the particular claims in this instalment.

12. The Panel, consistent with its previous practice, has been mindful that, as expressed in Governing Council decisions 7 and 13, compensation may only be awarded once in respect of a particular loss. 5/ Accordingly, the Panel has, among other things, requested the secretariat to ascertain whether other claims have been submitted to the Commission with respect to the projects, transactions or property that are the subject-matter of the claims under review. Where a claim has been found to be compensable in this instalment and compensation for the same loss has been awarded in

another claim, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the claim in this instalment. Where another claim for the same loss is pending before the Commission, the relevant information shall be provided to the Panel reviewing the other claim so that multiple compensation is avoided. 6/

13. Moreover, decision 7 requires the deduction of compensation from any other source in respect of the loss claimed before the Commission. In the fourth "E2" report, the "E2A" Panel determined that claims submitted in respect of losses for which indemnities had been received from insurers "are not admissible unless the claimant produces a mandate from the insurance company confirming that the claimant is authorized to seek in its own name compensation on behalf of the insurer". 7/ Claimants have submitted claims on behalf of insurers, including governmental export credit guarantee agencies, in the present instalment. The Panel adopts and applies the findings of the E2(4) report to such claims. 8/

14. The present instalment includes a number of claims by parent companies on behalf of their subsidiaries. Such claims are identified in the table of recommended awards in annex II. In such circumstances, the Panel has normally looked for an assignment of the claim from the subsidiary to the parent company, and has instructed the secretariat to verify that the subsidiary has not presented another claim before the Commission in respect of the same loss.

15. Paragraph 3 of article 35 of the Rules provides that corporate claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". The Panel found that several claims, or portions thereof, were defective in this respect. In some instances, claimants failed to submit documents other than a claim form and a brief statement of claim. In others, claimants submitted reports prepared by in-house or consultant accountants or loss adjusters but failed to file the financial records forming the basis of such reports. In addition, some claimants, although they submitted documentation, failed to organise their submission in a coherent fashion or did not supply explanations sufficient to allow the Panel to link the evidence to the particular elements of damage alleged. Where the lack of supporting evidence or explanation was only partial, the Panel has made deductions to any recommended awards to reflect these evidentiary deficiencies. Where the lack of supporting evidence or its defective presentation was so extensive as to prevent the Panel from understanding the circumstances or the amount of the losses claimed or from ascertaining

whether such losses are compensable, the Panel recommended that no compensation be awarded for the claims, or the relevant portions thereof.

II. REVIEW OF CLAIMS SUBMITTED BY STATE TELECOMMUNICATIONS AGENCIES

16. Five claims in this instalment are submitted by the telecommunications Ministries or State agencies of Egypt, Jordan, Syria, Tunisia and Turkey, which are responsible for domestic and international telecommunications exchanges. These claims are for losses stated to have resulted from the disruption of telecommunications traffic with either, or both, Iraq and Kuwait during the period of Iraq's invasion and occupation of Kuwait and thereafter. The claimants variously allege that Iraq's invasion and occupation of Kuwait directly resulted in (1) a loss of revenue normally received by such entities for the handling of international calls between their respective countries and Kuwait or Iraq ("international exchange revenue"); (2) increased expenditures necessitated by the re-routing of international calls; (3) increased expenditures associated with refugee populations; and (4) unpaid receivables.

17. As these claims are of a type that the Commission has not previously addressed, the Panel considers in this section the compensability of such claims, following a description of the factual background.

A. Factual background

18. At the time of Iraq's invasion of Kuwait and particularly for the five claimant States involved in this instalment, international telecommunications were routed through national telecommunication agencies. The system operates within the framework of multilateral agreements under the auspices of the International Telecommunications Union ("ITU"). Such general agreements are supplemented by bilateral agreements setting forth a number of details and, in particular, the respective charges for services.

19. The bilateral agreements applicable to the five claims in this instalment share the same characteristics: they are brief; they set forth basic obligations to handle in good faith such international traffic as there is; and, they lay down the basic tariffs and charges applicable to such handling of exchanges. The billing practice for international exchange services was uniform among the claimants in their respective bilateral relations with either Kuwait or Iraq. Monthly statements were exchanged detailing the traffic between the two countries for the previous month. Accounts were then exchanged each quarter (the "settlement statement"), stating the net amount owing between the two countries and payable "as soon as possible". There was no undertaking to guarantee a

certain volume of traffic, but the arrangements between the claimants and either Iraq or Kuwait were well-established and long-standing, and in some of the cases before the Panel generated substantial and consistent quarterly revenues for the claimant.

B. Decline in revenue from telecommunications exchanges

1. Claims description

20. All five of the State telecommunications claimants seek compensation for a decrease in revenue caused by the cessation or decline in telecommunications traffic with either, or both, Kuwait and Iraq during and, in some cases, after the end of Iraq's occupation of Kuwait. The claims relate to telephone, telex and telegraph traffic. One of the claimants also claims for the loss of income from television broadcasting traffic to Iraq.

2. Compensability

21. The Panel's analysis of the compensability of such claims for lost revenue from telecommunications exchanges begins with the requirement in Security Council resolution 687 (1991) that there be a direct loss resulting from Iraq's invasion and occupation of Kuwait.

22. In its second report, the Panel determined that "profits which, in the ordinary course of events [the claimant] would have been expected to earn and which were lost as a result of a decline in business" may represent direct losses resulting from Iraq's invasion and occupation of Kuwait within the meaning of Security Council resolution 687 (1991) and thus may be compensable. 9/

23. In its third report, the Panel concluded that a claimant may be eligible for compensation for a decline in revenue even though the claimant did not maintain a presence within the area previously delineated by the Panel as having been subject to actual military operations or the threat of military action for defined periods ("the compensable area", as summarised in paragraph 43 below). In particular, the Panel concluded that a claimant without a presence in the compensable area may have a compensable decline in revenue loss if the evidentiary standards of paragraph 11 of Governing Council decision 9 are met. 10/ These evidentiary standards call upon a claimant to demonstrate that:

> "there was a regular course of dealing with another party, demonstrating that the claimant had a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms and, in addition, that a consistent level of income and profitability had been realized from such dealings." 11/

24. With respect to the telecommunications business between each of the claimants on the one hand, and either Kuwait or Iraq on the other hand, the Panel finds that a sharp decline in the exchanges of traffic followed Iraq's invasion and occupation of Kuwait. In the case of Kuwait, this decline was due to the departure of persons and the general civil disorder in that country, as well as the destruction of communications facilities by military operations. 12/ The dismantling of telecommunications facilities in Kuwait commenced shortly after Iraq's invasion of Kuwait on 2 August 1990, and continued throughout the period of occupation. Reports indicate that the damage done to Kuwait's telecommunications infrastructure was extensive. 13/

25. In the case of Iraq, the departure of persons and the civil disorder following Iraq's invasion of Kuwait caused a decline in the volume of telecommunications exchanges. As observed in the first report by the category "A" Panel of Commissioners, "[t]he pre-invasion expatriate population in Iraq was in the vicinity of 1,162,000 persons" and, "the total number of expatriates [in Iraq] is reported to have fallen to approximately 887,000 within two months of the invasion". 14/ Expatriate workers, particularly nationals of States that had condemned Iraq's invasion of Kuwait, departed Iraq because of "their fear of being confined in a belligerent state with which their home states could soon be engaged in armed conflict". 15/ The decline in telecommunications exchanges in Iraq resulting from these departures was later compounded by the massive destruction of the communications infrastructure of Iraq by military operations. The Allied Coalition Forces' military operations, commencing after 15 January 1991, specifically targeted communications facilities in Iraq, including the dual-use civilian network. 16/

26. The Panel further finds, based upon records of telecommunications exchanges covering several years preceding 1990 provided by claimants, and from its own investigations and consultations with the ITU, that the telecommunications agencies so providing such records have satisfied the evidentiary criteria for a compensable course of dealing claim under paragraph 11 of decision 9, as summarised at paragraph 23 above. Each such

claimant has demonstrated that it had a "regular course of dealing with" Iraq or Kuwait, that it had a well-founded expectation of further business dealings of the same character with the same party under readily ascertainable terms, and that a consistent level of income and profitability had been realized from such dealings. The Panel therefore concludes that the claims for decline in revenue from international telecommunications exchanges are direct losses resulting from Iraq's invasion and occupation of Kuwait within the meaning of Security Council resolution 687 (1991), and are compensable in principle.

27. Given the extended period of time over which some of the claimants allege losses, the Panel must also consider if such claims for decline in revenue remain compensable for a period of time following the liberation of Kuwait and, if so, the extent of such period of time ("a recovery period" or "secondary compensation period"). The Panel has previously interpreted the Governing Council's decisions to mean that compensation for lost profits may be awarded for the period between the cessation of military operations and the time when the claimant reasonably could have resumed business activities at pre-invasion levels so long as the business was affected by a destruction of assets or a disruption of activities, which itself was the direct result of Iraq's unlawful invasion and occupation of Kuwait. 17/

28. The Panel notes that after the liberation of Kuwait and the cease-fire with Iraq, the telecommunications networks in both Kuwait and Iraq required considerable reconstruction before traffic could reach pre-invasion levels. In the case of Kuwait, it is reported that only limited "basic services" were restored within three months of the liberation. 18/ Wider services became available gradually during the two months that followed. In the case of Iraq, recovery appears to have taken significantly longer. 19/ The Panel finds that the predominant reason for the extended delay in the recovery of telecommunications networks in Iraq - that is, a recovery that took longer than the five months necessary in the case of Kuwait - to be the effect of the trade embargo or factors other than Iraq's invasion and occupation of Kuwait. Given the recovery work made necessary by Iraq's invasion and occupation of Kuwait, the Panel finds it appropriate to establish recovery periods for claims for lost revenue based on a decline in international telecommunications traffic with both Iraq and Kuwait as running from 2 March 1991 to 2 August 1991.

3. Verification and valuation

29. With regard to verification of claims for decline in revenue losses, the Panel looks both to the detail and duration of the historical record of revenues provided by the claimant in support of its claim. Where the record establishes with reasonable certainty that a loss was sustained, but is either not as detailed or does not cover an adequately long period to establish the exact quantum of the loss, the Panel applies an appropriate evidentiary discount. Where the record supplied is not sufficient to establish with reasonable certainty that a loss was sustained, the Panel recommends no compensation for the claim. In one case, no historical records were supplied by the claimant and, consequently, no compensation is recommended for the claim. In another case, the documentation submitted by the claimant failed to meet the formal requirements of the Commission and no compensation is recommended for the claim.

30. With respect to the valuation of the claims, the Panel recalls its previous holdings that such claims should be measured on the basis of the difference between projected and actual revenue during the compensable period, less the costs saved by the claimant as a consequence of the reduction or cessation of telecommunications exchanges. 20/ The alleged losses were presented by the claimants as projections from historical records showing monthly charges or units of telecommunications traffic, such units being the basis for calculating charges. In both cases, the Panel examines the net balance after deducting the charges due from the claimant.

31. As regards the savings potentially realized by claimants as a result of the reduction in telecommunications traffic, the Panel, after consultation with the ITU experts on the technical characteristics of the industry, concludes that in the case of telecommunications they were minimal. 21/ Accordingly, the Panel applies only a small discount in its valuation of these decline in revenue claims to reflect the savings in operating costs.

32. The Panel's recommendations with respect to the claims under review are set forth in annex II.

C. Re-routing of telecommunications services

1. Claims description

33. One claimant State telecommunication agency seeks compensation for the increased costs and reduced revenue arising from the re-routing of telecommunications traffic from May 1991 to December 1995. The claimant states that such losses were incurred because the transmission of telecommunications traffic to and from Kuwait, which had formerly been direct, had to take place through third countries because the entity formerly transmitting traffic between these two countries ceased to do so upon the invasion.

2. Compensability

34. The Panel views this claim as one for increased costs in operations and concludes that the claim is compensable in principle if the claimant demonstrates that the increased costs are direct losses resulting from Iraq's invasion and occupation of Kuwait. The Panel finds, however, that the claimant has failed to demonstrate that it incurred incremental costs and sustained reduced revenue as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, no compensation is recommended for this claim.

D. Provision of telephone facilities to refugees

1. Claims description

35. The claimant mentioned in paragraph 33 above also seeks the additional costs incurred in providing telephone facilities to its nationals who had returned from Kuwait or Iraq ("returnees"). The claimant asserts that such facilities were provided to returnees ahead of those on the existing waiting list for telephone services because governmental entities were instructed to do all that they could to ease their resettlement. Although the returnees paid installation fees for the facilities, the claimant states that, in order to provide the telephone facilities, the national telephone network required expansion and improvement, resulting in additional costs.

2. Compensability

36. The Panel finds that the costs of expanding and improving a national telecommunications network, undertaken over a period extending long after the cessation of hostilities and because of a Government's decision to provide telephone facilities to returnees on a priority basis, do not result directly from Iraq's invasion and occupation of Kuwait. Accordingly, no compensation is recommended for this claim.

E. Unpaid receivables

1. Claims description

37. Two State telecommunications agencies seek compensation for amounts stated to be due for telecommunications services rendered to Iraq prior to Iraq's invasion and occupation of Kuwait. One claimant seeks compensation for amounts due from Iraq for telecommunications exchanges from 1984 to 1992. The claimant states that, following an agreement with Iraq to reschedule the debt, Iraq made payments from November 1989 to reduce the arrears but ceased paying after June 1990. Another claimant seeks compensation for television broadcasting services provided to Iraq from 1986 to 1990 and telephone services provided in 1990, for which no payment was received.

2. Compensability

38. The Panel views these claims as being for amounts due in connection with services already provided and adopts the findings in its previous reports relating to claims for unpaid receivables due from Iraqi entities. Accordingly, the Panel finds the claims to be compensable if the "arising prior to" rule does not place the claim outside the Commission's jurisdiction and if the requirement of directness as described in its previous reports is satisfied. 22/

39. The Panel finds that, as in the case of amounts owed but unpaid under contracts with Iraqi parties as described in paragraph 49 below, Iraq's invasion and occupation of Kuwait continued as a cause of Iraq's non-payment for telecommunications services for a period after the cessation of hostilities on 2 March 1991. Accordingly, the Panel finds it appropriate to establish a compensation period running to 2 August 1991 for such claims that are determined to be compensable, as is the case generally for

contractual unpaid receivables. 23/ The Panel notes, however, that such claims must be reconciled with any claims for decline in revenue submitted by the same claimant covering the same period.

40. The documentation submitted by one of the claimants failed to meet the formal requirements of the Commission and no compensation is recommended for the claim. As to the remaining claim, the Panel adopts the above findings and applies them to that claim. Its recommendations are set forth in annex II.

III. REVIEW OF OTHER CLAIMS

41. In this section, the Panel reviews claims raising issues previously considered in the Commission. The Panel is guided by its previous findings and the findings of other Panels. First, the Panel recalls the principles generally applicable to the claims under review, and then proceeds to examine the claims by their loss type.

42. Paragraph 16 of Security Council resolution 687 (1991) provides that Iraq is liable "for any direct loss, damage ... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". Compensation will not, however, be provided for losses suffered as a result of the trade embargo and related measures except to "the extent that Iraq's unlawful invasion and occupation of Kuwait constituted a cause of direct loss ... which is separate and distinct from the trade embargo and related measures". 24/ The Panel, in its review of each claim must, therefore, determine whether the claimant has demonstrated that its alleged loss or damage resulted directly from Iraq's invasion and occupation of Kuwait.

43. Paragraph 21(a) of Governing Council decision 7 provides that loss or damage resulting from "military operations or the threat of military action by either side during the period 2 August 1990 to 2 March 1991" is directly caused by Iraq's invasion and occupation of Kuwait and may, thus, be compensable pursuant to Security Council resolution 687 (1991). In its E2(3) report, the Panel delineated locations that were subject to military operations and the threat of military action for the purposes of paragraph 21(a) of decision 7, as well as the periods during which they were affected (collectively referred to as "compensable locations" or "compensable areas"). The definitions of compensable locations that are relevant to the claims in the present instalment are set out below:

Area	Period
Iraq 25/	2 August 1990 - 2 March 1991
Kuwait 26/	2 August 1990 - 2 March 1991
Saudi Arabia (within the range of Iraq's scud missiles) 27/	2 August 1990 - 2 March 1991
Israel 27/	15 January - 2 March 1991

44. Even where a loss or damage has been sustained in a compensable location, the Panel examines whether the particular loss is a direct one.

A. Contracts involving Iraqi parties

1. Provision of goods and services for which payment was not received

45. Several claimants seek compensation for sums due under contracts involving Iraqi entities for the supply of goods and equipment, as well as for maintenance and other services. Also forming the subject-matter of some claims are turn-key contracts for the construction of telecommunications facilities and factories for the production of military equipment. The claimants assert that they had fully or partially performed their obligations under such contracts prior to Iraq's invasion and occupation of Kuwait but did not receive payments due.

46. In most instances, the claim is based on the agreed contract price. In many cases, the contracts included unusually long payment terms and provided for the payment of interest on outstanding credit amounts. In a few instances, the original terms of payment had been re-scheduled. In respect of these long term payment arrangements, claimants typically seek to recover the principal amounts due and related contractual interest.

47. The Panel recalls its E2(1) report where it concluded that, with reference to construction and supply claims involving Iraqi parties, when the performance giving rise to the debt had been rendered by a claimant more than three months before Iraq's invasion and occupation of Kuwait, that is, prior to 2 May 1990, a claim based on payment owed for such performance is to be considered as a debt or obligation of Iraq arising prior to Iraq's invasion and occupation of Kuwait and is therefore outside the jurisdiction of the Commission pursuant to paragraph 16 of Security Council resolution 687 (1991) ("the arising prior to" clause). 28/ The Panel refers also to the findings in the same report regarding deferred payment arrangements and unusually long payment terms which, the Panel determined, did not create new obligations for the purposes of Security Council resolution 687 (1991). 29/

48. With respect to claims brought by exporters of goods where the contract provided for payment by a letter of credit, the Panel adopts the findings of the "E2A" Panel regarding claims where losses are stated to arise from the failure of the Iraqi bank to honour a letter of credit that

it had issued to finance the purchase of goods shipped by the beneficiary-exporter to an Iraqi importer. For the purposes of the "arising prior to" clause, the "E2A" Panel found that it is the exporter-claimant's presentation of documents, as specified in the letter of credit, that completes its performance and triggers the issuing bank's obligation to honour the letter of credit. Accordingly, the "E2A" Panel determined that an exporter's claim is within the Commission's jurisdiction only where the documents were properly presented on or after 2 May 1990. Further, to ensure that Iraq's old debt would not be masked by unusually long or deferred payment terms, the "E2A" Panel added the condition that the period between the shipment of goods and the presentation of documents must not have exceeded 21 days (that being considered the normal period for the presentation of documents after shipment). 30/

49. Certain claims relate to goods supplied or services provided to Iraqi parties after 2 May 1990 for which payment did not become due until after the liberation of Kuwait on 2 March 1991. In the E2(4) and E2(6) reports, the "E2A" Panel considered the compensability of such losses in connection with claims of manufacturers and suppliers. The "E2A" Panel recognised that the effects of Iraq's invasion and occupation of Kuwait did not necessarily cease immediately upon the cease-fire on 2 March 1991 but subsisted for some period as a parallel cause of loss to the trade embargo. 31/ The "E2A" Panel concluded that, where a payment fell due between 2 March 1991 and 2 August 1991 but was not made by an Iraqi debtor, the ensuing loss might still constitute a direct loss resulting from Iraq's invasion and occupation of Kuwait and could, thus, be compensable. 32/ However, where payment became due only after 2 August 1991, the "E2A" Panel considered that such non-payment could no longer be deemed to have been directly caused by Iraq's invasion and occupation of Kuwait. 33/

50. The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

2. Interrupted contracts

51. Several of the claims under review arise in connection with the inability to perform contracts for the provision of goods and services concluded with Iraqi parties. The claimants assert that the interruption of these contracts was caused by Iraq's invasion and occupation of Kuwait. Some of the claimants allege that they had commenced, or even completed,

manufacture of products for Iraqi entities, but were unable to deliver and install such products because of Iraq's invasion and occupation of Kuwait.

52. Such claims are, generally, for the costs incurred prior to the suspension of performance and the profit that would have been earned under the contract; some also involve increased costs, for example, of storage and transportation incurred as a consequence of the interruption of the contract. Under some contracts, payment was not due from the Iraqi debtor until a considerable time after delivery or other completion of performance by the claimant, in particular after 2 August 1991.

53. The Panel refers to the interpretation of the "arising prior to" clause set forth in paragraph 47 above, which applies equally to the claims relating to contracts that were interrupted.

54. The Panel also recalls and adopts its interpretation of Governing Council decision 9 in its E2(1) report that:

> "Paragraph 9 provides that if a contract with Iraq became impossible to perform after 2 August 1990, Iraq is liable for 'any direct loss the other party suffered as a result, including lost profits'. The Panel interprets 'direct loss' in this context to mean only those losses that would, as of the date of the impossibility, reasonably be expected by both parties to the contract to occur given the nature of the work, the terms of the underlying contract and the cause of the impossibility to perform ... ." 34/

55. In the case of claims relating to contracts under which payments became due after the liberation of Kuwait, the Panel recalls the findings of the "E2A" Panel in the E2(4) report, that:

> "...[I]n many of the contracts where performance was interrupted between 2 August 1990 and 2 March 1991, payment by the Iraqi party was not due until after 2 August 1991. The Panel finds that Iraq is liable for any direct loss arising from the interruption of such contracts. This includes the costs reasonably incurred prior to the interruption of performance and, where appropriate, subject to the duty of mitigation, the expected profits under the contract apportioned over the period during which they would have been earned. Only amounts accrued within the compensable period may be awarded."35/

This Panel observes that, in the case of interrupted contracts, the more distant the date of payment, the greater the burden upon the claimant to demonstrate that it had a real expectation of generating income from the relevant transaction.

56. The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

57. Governing Council decisions 9 and 15 require claimants to mitigate their losses. 36/ The "E2A" Panel, in the E2(4) report, interpreted the duty to mitigate in the context of interrupted supply contracts as generally requiring "that the claimant sell the undelivered goods to a third party in a reasonable time and in a reasonable manner". 37/ The "E2A" Panel also observed that, "in discharging its duty to mitigate, the claimant must take reasonable steps to preserve the goods or commodities, in conditions appropriate to their nature, pending re-sale to a third party or resumption of performance of the original sales contract". 38/ In addition, the "E2A" Panel noted that "the duty to mitigate does not require that the resale efforts of the claimant be successful. Rather, it requires that the seller make reasonable efforts to reduce its loss". 39/ This Panel concurs with these determinations and finds that the same principles apply to losses arising in connection with interrupted contracts for the provision of services. Consequently, for such contracts, the claimant must demonstrate that it made reasonable attempts to reallocate its resources in order to mitigate its loss. Where a claimant has not discharged this duty, any award of compensation is reduced commensurately. 40/

58. With respect to one claim brought by a sub-contractor, the response of Iraq to the Panel's second procedural order states that the main contractor reached a settlement with the Iraqi owner. Iraq was requested to supply the text of the settlement agreement but did not do so. The Panel finds no indication in the evidence available that the settlement agreement involves the amounts claimed by the sub-contractor. This settlement agreement does not, therefore, preclude a claim for the remaining balance. 41/

59. One claimant seeks to recover for lost profits in connection with equipment supplied under a lease agreement, as well as the value of the lost equipment that was the subject of the lease. The Panel determines that the tangible property in question was taken on 2 August 1990. 42/ A simple claim for the loss of tangible property, when compensable, would lead to the valuation of the property as at that date. When compensation

is sought for a portion of the remaining lease period, however, the Panel finds that the property itself is to be valued as at the end of that portion of the period. The compensable portion of the remaining period of lease is determined with reference to the contractual period of notice for the lessee's termination of the lease, as representing the minimum basis for revenue that the claimant was entitled to expect. The Panel consequently finds the appropriate compensation for combined lease and loss of property claims to be the total of (1) the expected net revenue for the compensable lease period and (2) the residual value of the property as of the end of the compensable lease period.

3. Amounts due to paying banks under letters of credit

60. Five claimants are banks that paid exporters, between 1988 and July 1990, pursuant to a number of letters of credit issued by the Central Bank of Iraq and two Iraqi banks, Rafidain Bank and Al Rasheed Bank. As described at paragraph 2 above, these claims originally were presented in the fifth instalment of category "E2" claims and were transferred to the present instalment. The credits were issued to finance the purchase of goods by Iraqi importers. The goods were shipped between 1988 and July 1990 under payment terms ranging from payment upon delivery to payment two years from the date of shipment.

61. The claimant banks allege that they paid the exporters upon presentation by the exporters of documents in conformity with the requirements of the letters of credit but that the issuing Iraqi banks failed to reimburse them.

62. The Panel considered the compensability of similar claims in its E2(5) report. 43/ The Panel concluded that, in order to determine whether the claims by paying banks are within the Commission's jurisdiction under the "arising prior to" clause, the Panel should look to the date on which the claimant presented the documents to the issuing bank, as well as to the date of performance of the underlying transaction, that is, the date of shipment of the goods. 44/

63. Accordingly, for a paying bank's claim to be within the Commission's jurisdiction, the claimant bank must have presented the documents to the issuing bank after 2 May 1990, and the period between the exporter's shipment of the goods and the presentation of documents must not have

exceeded 21 days (that being considered the normal period for the presentation of documents after shipment). 45/

64. With respect to the five letter of credit claims deferred to the present instalment, the Panel has considered the information provided by the claimants together with the comments and responses submitted by Iraq, in the light of the criteria described in the preceding paragraphs. The Panel's recommendations with respect to each claim are set forth in annex II.

B. Contracts involving Kuwaiti parties

1. Provision of goods and services for which payment was not received

65. A number of claimants seek compensation in respect of amounts due but unpaid by Kuwaiti debtors for goods and services (such as installation of equipment, maintenance or advertising) provided prior to Iraq's invasion and occupation of Kuwait. Claimants cite many reasons for such non-payments. Some assert that the Kuwaiti party ceased operating during Iraq's invasion and occupation of Kuwait and did not resume business, or could not be traced, after the liberation of that country. Others state that the Kuwaiti parties declined to make payments because the goods that had been supplied had been lost or damaged during Iraq's invasion and occupation of Kuwait. The sums claimed became due for payment either prior to or during Iraq's invasion and occupation of Kuwait. In addition, in two claims under review, the claimants are insurers seeking compensation for unpaid premiums from persons and businesses in Kuwait. As described at paragraph 2 above, these two claims originally were presented in the fifth instalment of category "E2" claims and were transferred to the present instalment.

66. The Panel recalls the determination in its E2(1) report that claimants seeking compensation for the non-payment of amounts owed by Kuwaiti parties must "provide specific proof that the failure to perform was the direct result of Iraq's invasion and occupation of Kuwait". 46/ The Panel has observed that the failure of a Kuwaiti party to pay amounts owed "should not, for example, stem from a debtor's economic decision to use its available resources to ends other than discharging its contractual obligation, for such an independent decision would be the direct cause of the non-payment" rather than Iraq's invasion and occupation of Kuwait. 47/ The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

2. Interrupted contracts

67. Several of the claims under review arise in connection with the inability to perform contracts for the provision of goods and services concluded with Kuwaiti parties. The claimants assert that the interruption of contracts was caused by Iraq's invasion and occupation of Kuwait. In some cases, the contracts were formally cancelled or suspended; in others, the performance simply ceased upon Iraq's invasion of Kuwait and did not resume after the liberation of that country.

68. With regard to claims relating to supply contracts, some of the claimants had completed manufacture of goods destined for a Kuwaiti buyer and either did not ship the goods or, if the goods had already been shipped, had to arrange for their resale to a third party or their return. In other cases, the claimants had begun, but had not completed, manufacture of products. The majority of claimants seek compensation for the expected contract price.

69. With respect to interrupted service contracts, claimants typically seek to recover the costs incurred in performing the contracts prior to the interruption, as well as lost profits allegedly sustained because of their inability to provide services as a result of Iraq's invasion and occupation of Kuwait.

70. Several claimants also seek compensation for extraordinary costs associated with the interruption of the contracts. Such costs include redundancy and termination payments made to staff based in Kuwait and other parts of the world who were performing tasks in connection with the interrupted contracts, salaries paid to staff who could not perform any productive work during the period of Iraq's invasion and occupation of Kuwait, as well as additional transportation, maintenance and storage charges.

71. The Panel refers to the findings in its E2(3) report and determines that losses relating to the interruption of a contract with a Kuwaiti party that should have been performed during the period 2 August 1990 to 2 March 1991 may constitute direct losses resulting from Iraq's invasion and occupation of Kuwait within the meaning of Security Council resolution 687 (1991). 48/ With regard to such losses, the Panel undertakes a further inquiry, in accordance with the principles set forth in the following paragraphs, to ascertain whether the individual losses asserted are, in

fact, direct losses resulting from Iraq's invasion and occupation of Kuwait.

72. With regard to claims for the loss of expected profits from interrupted contracts, the Panel considers that the claimant may recover those amounts that the claimant expected to earn under the terms of the contract during the compensable period, subject to deductions for any cost savings brought about by the interruption of the contract and, where applicable, for any mitigation that the claimant could reasonably have been expected to undertake. 49/ In its assessment of claims relating to interrupted contracts, the Panel is also mindful that a "relevant consideration may be whether the contracting parties could resume the contract after the lifting of the embargo against Kuwait, and whether they have in fact resumed the contract". 50/ Thus, where the claimant has concluded new contracts with the same parties after the liberation of Kuwait which involve in whole or part the same work that the claimant would have undertaken under the original contract, the claimant will normally not have suffered an actual loss.

73. With respect to the extraordinary costs described in paragraph 70 above, the Panel has previously determined that such costs can be direct consequences of Iraq's invasion and occupation of Kuwait and may, thus, be compensable. 51/ Similarly, the "E2A" Panel, considering losses arising in connection with interrupted contracts, concluded that compensation may also be awarded for "reasonable incidental costs" and interpreted such costs to include "expenses incurred in stopping delivery; transportation and other costs to return the goods or dispatch them to another buyer; and storage fees and maintenance costs pending resale" to the extent in each case that such costs are "appropriate in nature and reasonable in duration". 52/

74. Claimants also seek increased staff costs. With regard to increased costs of salary payments made to unproductive staff, the Panel recalls its findings in the E2(5) report, that such costs are compensable "to the extent that the lack of productivity was a direct result of Iraq's invasion and occupation of Kuwait... and the employee could not be reassigned to other productive tasks". 53/ In addition, as determined in its E2(3) report, the Panel finds that contractually or legally required expenses incurred in terminating employment rather than incurring unproductive staff expenses are compensable in principle. 54/ In this context, the Panel observes that, where the staff were located outside a compensable area, the Panel will require a stronger showing, based on the facts of the claim, that, firstly, the costs of termination payments or unproductive salaries

were caused directly by Iraq's invasion and occupation of Kuwait and, secondly, that the claimant has discharged its duty to mitigate losses. Relevant considerations include whether the employees had been specifically appointed to work on the interrupted contract or were otherwise closely connected to it and the opportunities open to the claimant to redeploy staff to other tasks. The Panel also recalls the finding in its E2(3) report that additional payments made to staff as incentives to enable claimants to continue operations in the compensable area during the hostilities are compensable to the extent that they were reasonable in amount. 55/

75. One of the claims under review is in respect of an interrupted lease concluded with a Kuwaiti party. In addition to claiming for lost profits, the claimant seeks compensation for the loss of the tangible property forming the subject-matter of the lease. The Panel applies to this claim its findings set forth at paragraph 59 above regarding a similar loss arising in connection with a lease agreement concluded with an Iraqi party.

76. In some instances, the record shows both that the interruption of the contract was caused by Iraq's invasion and occupation of Kuwait and that the contract could have been resumed but was not for the lack of agreement between the parties. In those instances, the Panel reduces the award to take into account the non-compensable part of the claim.

77. The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

3. Goods lost or destroyed in transit

78. Five claimants seek compensation in respect of goods that are said to have been shipped to Kuwait but were lost prior to receipt by the Kuwaiti buyer. In all cases, the goods are stated to have been shipped to Kuwait, by air or sea, in June or July 1990. The claimants seek the loss of profits in connection therewith, or the invoice price of the goods.

79. Dealing with similar claims, the "E2A" Panel has found that the breakdown of civil order and the military operations that took place in Kuwait had a particular impact upon the sea and air ports of Kuwait, and further noted the difficulty faced by claimants in providing specific proof of the circumstances in which goods were lost. In the light of such circumstances, the "E2A" Panel determined that, "in the absence of evidence

to the contrary, where non-perishable goods arrived at a Kuwaiti sea port on or after 2 July 1990 or at a Kuwaiti airport on or after 17 July 1990 and could not thereafter be located by the claimant, an inference can be made that the goods were lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait". 56/ The "E2A" Panel also determined that, for shipments made prior to these dates, specific evidence is required to demonstrate that the losses resulted directly from Iraq's invasion and occupation of Kuwait. 57/ The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

C. Contracts involving parties from other States

1. Provision of goods and services for which payment was not received

80. One claimant seeks compensation for non-payment in respect of technical services that it had provided under a contract with a Saudi Arabian party. Following Iraq's invasion of Kuwait, the claimant withdrew its employees from Saudi Arabia and ceased to perform the contract.

81. The Panel notes the existence of disputes between the parties to the contract both as to work performed before the invasion and as to the claimant's later withdrawal of personnel from Saudi Arabia after Iraq's invasion of Kuwait. The Panel concludes that the claimant has failed to demonstrate that the non-payment resulted directly from Iraq's invasion and occupation of Kuwait, rather than from the contract dispute and the claimant's own decision not to pursue the contractually provided avenues for redress.

2. Interrupted contracts

82. Three claims under review relate to the inability to complete performance of contracts in Israel and at various sites in Saudi Arabia. The claimants typically seek compensation for lost profits and for additional costs incurred in the form of termination payments made to staff when performance of a contract ceased, and salaries paid to staff that could not perform other productive work for the claimant.

83. The Panel finds that losses sustained in a compensable area during the periods stated at paragraph 43 above are compensable in principle. The Panel undertakes a further inquiry to determine whether the specific loss asserted is direct. Where these criteria have been met, the Panel

recommends awards for lost profits or increased costs in accordance with the principles set forth at paragraphs 71 to 74 above. The Panel's recommendations with respect to each claim are set forth at annex II.

3. Continued performance of a contract

84. One claimant asserts that it incurred increased costs in order to continue performing contracts to maintain telecommunications networks in Saudi Arabia during Iraq's invasion and occupation of Kuwait, and suffered losses as a result. The claimant seeks compensation for, inter alia, the costs of hazard allowances paid to staff, overtime payments and staff recruitment costs. These costs are stated to have been incurred for several reasons, including the need to maintain the telecommunications networks to support the Allied Coalition Forces' military operations, to repair facilities damaged by Iraqi forces (particularly in the vicinity of Al Khafji), and to facilitate the management of the flow of refugees from Iraq or Kuwait into Saudi Arabia. In addition, the claimant seeks compensation for a loss of profit under the same contracts.

85. The Panel finds that losses sustained in a compensable area during the periods stated at paragraph 43 above are compensable in principle. The Panel undertakes a further inquiry to determine whether the specific loss asserted is direct. Where these criteria have been met, the Panel recommends awards for lost profits or increased costs in accordance with the principles set forth at paragraphs 71 to 74 above.

86. With regard to costs incurred in connection with the Allied Coalition Forces' military operations, the "F2" Panel has interpreted Governing Council decision 19 as precluding compensation for costs incurred in connection with "preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait". 58/ The Panel concurs with this interpretation and applies it to the claim under review. Where a loss results that is only in part in connection with the Allied Coalition Forces' military operations, the Panel makes an appropriate adjustment to any award of compensation recommended to take into account the non-compensable portion of the claim. The Panel's recommendations with respect to this claim are reflected in annex II.

D. Business loss or course of dealing

1. Decline in business or course of dealing

87. Two claimants, respectively based in Europe and North America, maintained branches, offices or other establishments in Kuwait, Iraq or Saudi Arabia, to facilitate the provision of maintenance services in connection with equipment that they supplied to buyers in these locations. The claimants assert that they sustained a loss of profits resulting from a decline in business because they had to temporarily cease or reduce their business operations in Kuwait, Iraq or Saudi Arabia.

88. Another claimant, based in Europe and engaged in the advertising industry, while not maintaining a presence within the compensable area, conducted business with entities located in the Middle East on behalf of its European clients. The claimant seeks compensation for, inter alia, the loss of revenue sustained during the period of Iraq's invasion and occupation of Kuwait and thereafter.

89. In its previous reports, the Panel has held, with regard to claimants based outside the compensable area but which maintained a presence in a compensable area by way of a branch, agency or other establishment, that claims for a decline in business are compensable in principle "for profits which, in the ordinary course of events, [the claimant] would have been expected to earn and which were lost as a result of a decline in business directly caused by Iraq's invasion and occupation of Kuwait". 59/

90. The Panel adopts the above findings and applies them to the claims described in paragraph 87 above. Its recommendations are set forth in annex II.

91. With regard to claimants based outside the compensable area and not maintaining a presence there, the Panel has concluded that each claim is to be evaluated under the evidentiary standards of paragraph 11 of Governing Council decision 9 as summarised at paragraph 23 above.

92. Where a claimant conducted business activities related to the compensable area, but does not have a presence there and its payment for such activities comes solely from clients based outside the compensable area, the sufficiency of the connection with the compensable area requires particular scrutiny by the Panel. The Panel finds that the claim described at paragraph 88 above does not meet the standards set forth at paragraph 23 above.

2. Increased costs

93. Several claimants seek compensation for additional costs incurred as a result of the disruption or cessation of their business operations in Iraq, Kuwait and Saudi Arabia. Some of the claimants had a presence within the compensable area; others did not. The most frequently claimed losses are termination payments and other indemnities provided to employees whose employment was terminated and the cost of salaries paid to staff during periods that such staff could not undertake any productive work.

94. One claim is submitted for the additional costs incurred in resuming business operations after the liberation of Kuwait. The claimant states that its office and workshop in Kuwait were destroyed during the occupation and seeks, inter alia, compensation for increased costs incurred in setting up a temporary workshop in Kuwait, including freight costs, in order to resume operations.

95. Other costs claimed relate to humanitarian payments and other assistance provided to employees, for example, in connection with the evacuation of personnel. Such claims are considered under the rubric "Payment or relief provided to others" in section E below.

96. With respect to claims for payments made to staff, the Panel applies the findings in its earlier reports, summarised at paragraph 74 above.

97. With regard to claims for additional costs incurred in resuming business operations in Kuwait after the liberation of that country, the Panel applies the principle enunciated in its E2(1) and E2(5) reports that post-liberation start-up costs are compensable where they represent "extraordinary expenses that were incurred as a direct result of Iraq's invasion and occupation of Kuwait", but not where the claimant has failed to demonstrate that the costs are not merely "ordinary expenses incurred as part of an on-going business enterprise". 60/

98. The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

E. Payment or relief provided to others

1. Evacuation, relocation and repatriation costs

99. Many of the claimants seek to recover costs incurred in evacuating, relocating or repatriating employees and their dependants. The employees were located in, variously, Kuwait, Iraq, Saudi Arabia and Israel. The costs involved are for transportation out of the "war zone", exit visa fees, as well as lodging and food provided during such journeys.

100. The Panel recalls the findings in its E2(3) report that evacuation costs are compensable if actual military operations took place in, or a threat of military action was directed at, the location from which persons were evacuated. 61/ The Panel refers to its delineation of the areas subject to military operations and the threat of military action set forth at paragraph 43 above, and finds that costs incurred in evacuating employees and their dependants from such locations are compensable in principle.

101. In some instances, evacuations were undertaken from compensable areas immediately prior to the period during which the Panel has determined that military operations existed in, or a threat of military action was directed against, such areas. The Panel finds that, in the claims under review, such prudent evacuations which took place shortly before the compensable period are eligible for compensation, particularly since the costs of such evacuations were no greater than those that would have been incurred during the compensable period.

102. The Panel further considers the compensable types of evacuation costs. The Panel has previously determined that compensable evacuation costs are "temporary and extraordinary" expenses related to the repatriation of employees, including expenses incurred for transport, accommodation, food and urgent medical treatment. The Panel also determined that "stop-over costs incurred at locations outside the home country of the evacuee, which are part of the on-going evacuation journey from [the compensable area] and which are not a significant interruption in that journey, are compensable on the same basis as costs incurred to evacuate individuals directly from these locations", 62/ and that expenses related to repatriation that would have been incurred by a claimant in any event are not compensable. 63/

103. The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

2. Provision of support to employees and their dependants

104. In addition to the costs incurred in effecting evacuations, claimants seek compensation for expenses incurred in providing support to employees and their dependants during the period that they were evacuated or otherwise unable to return to the "war zone". The expenses claimed include the costs of accommodation, food, communications, transportation, medical treatment and education for the employees' dependants. In most cases, such support costs were incurred in the home countries of the employees or the home base of the claimant. One claimant, however, relocated its employees from Saudi Arabia to a third country, closer to the Middle East, which, it is alleged, was less costly than repatriation to the claimant's home base.

105. In addition, some claimants seek compensation for support costs with respect to staff who were detained or were otherwise unable to leave Iraq or Kuwait. Claimants state that they provided financial and other support to the employees and to their families. With respect to staff unable to leave Iraq or Kuwait, the claimants typically seek the costs of accommodation, food and communications. With respect to their dependants, the costs claimed relate to assistance in meeting day-to-day living expenses, the provision of counselling and other humanitarian assistance. Also claimed are expenses incurred in the establishment of "crisis teams" to monitor the conditions of detained employees and seek their release, to maintain contact with dependants and to provide medical and psychiatric treatment to dependants and to detained employees upon their release. In a few instances, the costs of holidays provided to released employees and their dependants are claimed.

106. With regard to the claims for support costs incurred in respect of employees and their dependants who were relocated, the Panel determines that, where such costs were incurred in connection with employees and dependants formerly located in the compensable area, as defined in paragraph 43 above, such costs are compensable in principle. The criteria for compensable evacuation costs set forth at paragraph 102 above apply. Thus, to the extent that such costs are "temporary and extraordinary" and would not have been incurred by a claimant in any event, such costs are compensable in principle. The Panel further finds that, to be compensable, the costs incurred must be reasonable in amount, given the prevailing circumstances.

107. With regard to support provided to detainees, the Panel concludes that, pursuant to Governing Council decision 7, costs incurred in providing accommodation, food and other assistance to detainees during their detention are compensable in principle, to the extent that such costs were reasonable in the circumstances. 64/ The Panel also refers to the finding in its E2(3) report that "a claim for costs incurred in facilitating communication between detainees and members of their family" is compensable in principle. 65/

108. As to the provision of support to family members of detainees, the Panel applies its earlier finding that "such costs are compensable to the extent that they would not have been incurred in any event, were prompted by humanitarian considerations and were reasonable in amount". 66/ The Panel recalls also its earlier determination that "[e]xpenses such as [those] relating to the establishment and operation of crisis centres or psychologists' fees" for detainees and their families are compensable in principle. 67/ Where, however, the costs are "discretionary expenses, such as payments for family holidays following the release of detainees", or otherwise do not appear to be reasonable, these are not compensable in accordance with the Panel's earlier determinations. 68/

109. The Panel adopts the above findings and applies them to the claims under review. Its recommendations are set forth in annex II.

3. Protective measures

110. Two claimants which were operating in Saudi Arabia seek to recover the costs incurred in respect of security and protective measures. The claimants seek compensation for the costs of providing, inter alia, gas masks, medical kits, drinking water and food supplies to their employees.

111. The Panel has previously determined that the costs of reasonable protective measures designed to protect the lives of employees located in a compensable area (for example, the purchase of gas masks) are compensable in principle. 69/ The Panel notes that certain equipment will have retained a residual value after the cessation of hostilities. Accordingly, the Panel makes an adjustment to a recommended award, where appropriate, to reflect such residual value. The Panel reiterates this finding and applies it to the claims under review. Its recommendations are set forth in annex II.

4. Personal property reimbursement

112. Certain claimants seek compensation in respect of payments made to employees to reimburse them for the loss of personal property that was left behind due to their sudden departure from Iraq and Kuwait. In some cases, payments were made pursuant to contractual obligations; in most, they were not contractually required.

113. The Panel refers to the finding in its E2(3) report that payments made as reimbursement to employees for loss of personal property are compensable in principle, "where [they] were made pursuant to legal obligations or otherwise appear justified and reasonable under the circumstances". 70/ The Panel adopts this finding and applies it to the claims under review. Its recommendations are set forth in annex II.

F. Loss of tangible property

114. Claims are submitted for the loss of or damage to a wide variety of tangible assets, ranging from household and office furniture to armoured vehicles and telecommunications equipment.

115. In most cases, the tangible property in question was located in Iraq or Kuwait and was under the control of the claimant immediately prior to Iraq's invasion and occupation of Kuwait. However, two claimants assert the loss of equipment leased to Kuwaiti and Iraqi entities. These two claimants also seek compensation for the loss of profit arising from the non-payment of rental for the leased equipment. 71/

116. The Panel recalls its earlier determination that claims for lost tangible property are compensable in principle if the record shows that the claimant's assets were in Kuwait or Iraq as of 2 August 1990 and such assets were lost or destroyed during Iraq's invasion and occupation of Kuwait. 72/ The Panel also recalls that, with respect to claims for the loss of cash, a high level of scrutiny is applied because of the greater potential for fraudulent claims. 73/

117. Where the claim for loss of tangible property also includes a claim for loss of profit based on a lease of such property, the Panel values these claims together, in the manner set forth at paragraph 59 above.

118. The Panel adopts these findings and applies them to the claims under review. Its recommendations are set forth in annex II.

G. Loss of funds in bank accounts

119. Two claimants seek compensation for funds held in bank accounts in Iraq. In both cases, the funds were to be applied to meet the claimant's business expenses in Iraq.

120. The Panel applies the findings in its previous reports that claims for funds held in Iraqi bank accounts are compensable if the claimant had a reasonable expectation that it could transfer the funds outside Iraq, but such claims are not compensable if the funds were not exchangeable for foreign currency. 74/ As the claims under review relate to funds that were to be applied to local expenses and, therefore, there was no reasonable expectation that they would be transferred outside Iraq, no compensation is recommended.

H. Loss of use of real property

121. Claimants seek compensation for the loss of advance rental payments made in respect of premises in Kuwait and Saudi Arabia that could not be occupied because of Iraq's invasion and occupation of Kuwait.

122. As determined by the Panel in its previous reports, advance rental payments in the case of businesses are best considered within a loss of profits claim. 75/ In some instances, however, as is the case with the claims presently under review, it is not possible to value a claim for advance rental payments as an element of a loss of profits claim because of the manner in which the claims are presented (for example, the claimant has not also submitted a claim for lost profit). The Panel, in such cases, considers that the advance payment of rent created an entitlement to the use of an asset and, to the extent that the claimant's inability to receive the "benefit of the amounts paid in rent during the relevant period was the direct result of Iraq's invasion and occupation" the claims for advance rental payments are compensable in principle. 76/ The Panel's recommendations with respect to such claims are set forth in annex II.

I. Loss of income-producing property

123. Two claimants seek compensation for the cessation of their entire business operations as a result, they state, of Iraq's invasion and occupation of Kuwait. One claim relates to a business in Kuwait which, the claimant asserts, could not be resumed after the liberation of that

country. The claimant seeks the profits that it allegedly would have earned had not Iraq's invasion and occupation of Kuwait interrupted its business operations. The other claim is in respect of a branch office in Baghdad that was closed after Iraq's invasion and occupation of Kuwait.

124. The Panel finds that each claimant failed to present sufficient evidence, in particular underlying documents such as financial statements and accounts that it maintained contemporaneously, in support of its claim. Consequently, the Panel does not recommend compensation in respect of these claims.

IV. INCIDENTAL ISSUES

A. Date of loss

125. The Panel must determine "the date the loss occurred" for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars, and with respect to the awarding of interest at a later date in accordance with Governing Council decision 16. The Panel is guided by its findings in its previous four reports, as well as the findings of other Panels. The date when the loss occurred depends most significantly on the character of the loss, and the following paragraphs address each loss type in turn.

126. With respect to the claims based on contract losses in this instalment, the Panel notes that the date of loss for each contract normally would depend on the facts and circumstances surrounding the non-performance of the contract. 77/ However, given the large number of contracts before the Commission and the significance of one event (i.e., Iraq's invasion of Kuwait) on contractual relations, the Panel finds, as it did in its E2(3) report, that 2 August 1990 represents an appropriate and administrable date of loss for the contract claims now under consideration.78/

127. With respect to claims for a decline in business or course of dealing leading to loss of profits or claims for increased costs, the Panel notes that such losses in this instalment were suffered over extended periods of time rather than at a particular moment or at particular moments. Given these circumstances, the Panel selects the mid-point of the relevant compensable period (including potential relevant primary or secondary periods, as the case may be) during which the particular loss occurred as the date of loss. 79/ For the same reasons, the Panel selects the mid-point of the relevant compensable period (including relevant primary and secondary compensable periods) for the decline in revenue claims submitted by ministries of telecommunications and State telecommunications corporations.

128. With respect to claims for payment or relief to others, including evacuation costs, the Panel notes that such losses likewise have been incurred throughout the compensable period applicable to the geographic area for which the costs were incurred and, therefore, the Panel selects

the mid-point of the compensable period as the date of loss for costs of this nature. 80/

129. With respect to claims for loss of tangible assets, the Panel selects 2 August 1990 as the date of loss as that date generally coincides with the claimant's loss of control over the assets in question in this instalment.81/

130. Similarly, with respect to claims for loss of use of real property, in the present instalment, claimants have normally lost the ability to use property for which they had contracted and paid rent at 2 August 1990 and, accordingly, the Panel adopts this as the date of loss for such claims.

B. Currency exchange rate

131. Many of the claimants have advanced claims in currencies other than United States dollars. The Panel assesses all such claims and performs all claim calculations in the original currencies of the claims. Since the Commission issues its awards in United States dollars, the Panel must determine the appropriate rate of exchange to be applied to claims where the losses are alleged in other currencies. The Panel is guided by its previous findings, and by the views of other Panels. Particular rules are established for Kuwaiti dinars, set forth in paragraph 138 below, and for the conversion of Gold francs ("XFO") and Special Drawing Rights ("SDRs"),set forth at paragraph 139 below.

132. Noting that all prior Commission compensation awards have looked to the United Nations Monthly Bulletin of Statistics (the "UN Monthly Bulletin") for determining commercial exchange rates into United States dollars, the Panel adopts that source for the data to be utilized in exchange rate calculations. The Panel notes that the UN Monthly Bulletin provides a monthly figure for each currency which reflects the average exchange rate for that currency for the last day of the month in question.

133. For claims based on contract losses in this instalment, the Panel, noting that the date of loss set forth in paragraph 126 above for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

134. For claims for decline in business or course of dealing leading to loss of profits and claims for increased costs (excluding those claims for

decline in revenue submitted by Ministries of telecommunications and State telecommunications agencies, which are addressed in paragraph 139 below), the Panel finds that the appropriate rate will be the average of the rates reported in the UN Monthly Bulletin for the months over which the particular claimant is compensated. 82/

135. For claims for payment or relief to others within this instalment, including evacuation costs and security measures, the Panel, noting that the date of loss set forth in paragraph 128 above for such claims is the mid-point of the compensable period, finds, determines that the appropriate rate will be the rate reported in the UN Monthly Bulletin for the month in which that mid-point falls. 83/

136. For claims for the loss of tangible assets, the Panel, noting that the date of loss set forth in paragraph 129 above for such claims is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

137. For claims for the loss of real property, the Panel, noting that the date of loss set forth at paragraph 130 above is 2 August 1990, adopts the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin.

138. The above rules apply to claims stated in currencies other than the Kuwaiti dinar. For claims denominated in Kuwaiti dinars, the Panel, noting the extreme fluctuation in the value of that currency during the period of occupation of Kuwait and the earlier findings of this and other Panels, adopts the rate of exchange for 2 August 1990, namely the last available exchange rate unaffected by Iraq's invasion and occupation of Kuwait, as reported in the UN Monthly Bulletin. 84/

139. The Panel observes that it is the established practice of the international telecommunications industry for States to conclude bilateral agreements on the rates that shall apply between them for the provision of telecommunications services. As provided in the International Telecommunications Regulations ("the Regulations"), such rates are typically stated in Gold francs and SDRs. 85/ The Panel assesses the claims for decline in revenue submitted by State telecommunications administrations in the currency applicable to the individual claim; either the Gold franc or SDR. Where the Gold franc is applicable, the Gold franc is converted to the SDR by application of the standard exchange rate provided in the Regulations, that is, 3.061 XFO : 1 SDR. 86/ To convert

SDRs into United States dollars, the Panel applies the rates reported in the International Financial Statistics of the International Monetary Fund.

C. Interest

140. Governing Council decision 16 states that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council further specified that it would consider the method of calculation and of payment of interest at a later date and that "[i]nterest will be paid after the principal amount of awards".

141. With respect to the awarding of interest in accordance with Governing Council decision 16, the Panel notes that the dates of loss defined in paragraphs 126 to 130 above may be relevant to the later choice of the dates from which interest will accrue for all compensable claims.

D. Claims preparation costs

142. In a letter dated 6 May 1998, the Executive Secretary of the Commission advised the Panel that the Governing Council intends to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

V. RECOMMENDATIONS

143. Based on the foregoing, the Panel recommends that the amounts set out in annex II below, totalling USD 56,992,808, be paid in compensation for direct losses suffered by the claimants as a result of Iraq's unlawful invasion and occupation of Kuwait.

Geneva, 12 January 2001

(*Signed*) Mr. Bernard Audit
Chairman

(*Signed*) Mr. José María Abascal
Commissioner

(*Signed*) Mr. David D. Caron
Commissioner

Notes

1/ The claims reviewed have been filed by 27 Governments on behalf of claimant companies, and one claim was submitted directly by the claimant. The total claimed amount, excluding the value of three claims that were withdrawn by claimants after the commencement of the Panel's review, is USD 927,759,721. This figure includes amounts claimed for interest and claim preparation costs. As explained in paragraphs 140 to 142 of this report, the Governing Council will consider claims for these types of losses at a future date.

2/ See E2(5) report, paras. 12 and 59.

3/ E2(1) report, paras. 38-48.

4/ See, for example, E2(3) report, paras. 175-179 (verification procedures); 180-182 (general methodology); 198-199 (contract losses); 200-201 (evacuation costs); 202 (payment or relief to others); 203-207 (tangible property and cash). See also E2(2) report, paras. 146-152 (decline in business).

5/ See decision 7, para. 25 and decision 13 generally.

6/ E2(3) report, para. 181. See also E2(4) report, paras. 204-210; E2(6) report, paras. 14-15.

7/ E2(4) report, para. 207.

8/ Several claims are brought on behalf of governmental export credit guarantee agencies. If the claimant has demonstrated that it is under a legal obligation to pursue recovery on behalf of the agency, and this obligation has been acknowledged in a statement to the Commission by the relevant national authority, the Panel finds that the requirement of a mandate, as described in paragraph 13, is met. Such information was passed to the category "E/F" Panel to avoid duplicate compensation to export credit guarantee agencies with claims pending before that Panel.

9/ E2(2) report, para. 78.

10/ E2(3) report, para. 103.

11/ E2(3) report, para. 105. The Panel also concluded that "[a] mere showing of past earnings from operations to locations in the compensable area will be insufficient to establish a course of dealing giving rise to compensable losses".

12/ In addition, most expatriate workers, including those who had used the telecommunications facilities and those who had maintained them, departed Kuwait during the period of the occupation. In the months following the invasion, Kuwait's population is estimated to have decreased to nearly 492,000 persons (from a pre-invasion population of approximately 2,142,6000), with at least 50% of Kuwaiti nationals and over 90% of the expatriate population leaving the country. Available statistics indicate that 500,000 Egyptians and 350,000 Jordanians departed Iraq and Kuwait after 2 August 1990. Reports further indicate that approximately 50,000 Syrian and 5,000 Turkish nationals left Iraq. See C(1) report, S/AC.26/1994/3, pp. 59-65 (describing, inter alia, the departure of people from Iraq and Kuwait after 2 August 1990).

13/ An inspection of telecommunication facilities after the liberation of Kuwait "indicated widespread disruption in the system and considerable harm to its physical infrastructure". Report to the Secretary-General by a United Nations mission, led by Mr. Abdulrahim A. Farah, former Under-Secretary General, assessing the scope and nature of damage inflicted on Kuwait's infrastructure during the Iraqi occupation of the country from 2 August 1990 to 27 February 1991, S/22535, 26 April 1991, at para. 350.

14/ A(1) report, page 10.

15/ E3(1) report, para. 65, 121, with reference to the departure of Turkish workers from Iraq. See also Egyptian Workers' Claims report, para. 102. Egypt was notably at the forefront of condemnation of Iraq's unlawful invasion of Kuwait, voting for a resolution condemning Iraq's invasion of Kuwait at an Extraordinary Session of the Council of the Arab League held in Cairo on 2 August 1990, and for a resolution adopted at an Extraordinary Arab Summit convened on 10 August 1990, which provided for the establishment of a multinational Arab force to confront Iraq. See, generally, Lawrence Freedman & Efraim Karsh, The Gulf Conflict (1994), p. 99.

16/ It is reported that the Allied Coalition Forces believed that up to 60% of Iraq's military communications passed through the civilian network. See also Lawrence Freedman & Efraim Karsh, The Gulf Conflict (1994), p. 324. A United Nations mission to Iraq in March 1991 confirmed that "all internal and external telephone systems had been destroyed, with the exception of a limited local exchange in one town. ... Communication in Iraq is now on a person-to-person basis, as mail services have also disintegrated." Report to the Secretary-General on humanitarian needs in Kuwait and Iraq in the immediate post-crisis environment by a mission to the area led by Mr. Martti Ahtisaari, Under-Secretary General for Administration and Management, S/22366, 20 March 1991, at para. 34.

17/ See E2(1) report, para. 247 and E2(2) report, para. 79.

18/ "Transport & Communications", Economist Intelligence Unit, EIU Country Profiles, Kuwait, 1 November 1993. Cf. "Privatisation of some Kuwaiti communication services authorised", Moneyclips, 6 July 1992.

19/ See, for example, Mideast Mirror, 27 September 1993, stating "the Arab press reports Wednesday that Iraq has announced the completion of work to rebuild a civilian satellite telecommunications facility north of Baghdad that was destroyed by allied bombing during the war".

20/ The Panel has previously applied such an approach, as appropriate, to claims for decline in revenue by claimants engaged in tourism, air transportation and a variety of other businesses. See E2(2) report, paras. 146-152 and E2(3) report, paras. 183-191.

21/ Although a portion of constant investment in infrastructure made by any telecommunications provider could be attributed to a particular stream of income, there is no indication that any of the claimants reduced such infrastructure investment as a result of this decline in traffic.

22/ See paragraphs 47 and 49. Awards for unpaid receivables are taken into consideration when decline in revenue awards are also made to avoid multiple compensation for the same loss, as noted in paragraph 39.

23/ E2(4) report, paras. 117-119; E2(6) report, para. 42. See para. 49 below.

24/ Governing Council decision 9, para. 6. See also decision 7, para. 9 and decision 15.

25/ In respect of claims by State telecommunications agencies for decline in revenue, a recovery period from 2 March to 2 August 1991 applies (see paragraph 28 above). In respect of unpaid receivables due from Iraqi parties, including those owed to State telecommunications agencies, the Panel has applied a compensation period running to 2 August 1991 (see paragraphs 39 and 49 above).

26/ In respect of claims by State telecommunications agencies for decline in revenue, a recovery period from 2 March to 2 August 1991 applies (see paragraph 28 above).

27/ The Panel notes that losses that are specifically demonstrated to result from other circumstances and events identified as giving rise to direct losses under paragraph 21 of Governing Council decision 7 may also be compensable in principle.

28/ E2(1) report, para. 90. Paragraph 16 of Security Council resolution 687 (1991) excludes from the jurisdiction of the Commission the "debts and obligations of Iraq arising prior to 2 August 1990".

29/ E2(1) report, paras. 81-96.

30/ E2(4) report, paras. 92-96, 98. For the compensability of claims by paying banks relating to unpaid letters of credit, see E2(5) report, paras. 57-58.

31/ E2(4) report, paras. 117-118; E2(6) report, para. 42. Governing Council decision 9, paragraph 6, provides that "[c]ompensation will be provided to the extent that Iraq's unlawful invasion and occupation of Kuwait constituted a cause of direct loss ... which is separate and distinct from the trade embargo and related measures". See also E2(4) report, paras. 110-111.

32/ E2(4) report, para. 118; E2(6) report, para. 42.

33/ E2(4) report, para. 119; E2(6) report, para. 42.

34/ E2(1) report, para. 118.

35/ E2(4) report, para. 125.

36/ Decision 9, para. 6; Decision 15, para. 9(IV).

37/ E2(4) report, para. 202(a).

38/ E2(4) report, para. 202(a).

39/ E2(4) report, para. 203(b).

40/ See also E2(1) report, para. 124; E2(3) report, para. 114.

41/ E2(1) report, para. 145, note 56. See also E2(6) report, para. 85.

42/ See para. 129.

43/ E2(5) report, paras. 29-30; 55-59.

44/ See paragraph 48. Similar principles, applicable to claims submitted by exporters based upon unpaid letters of credit, are set forth at paragraphs 91-96 of the E2(4) report.

45/ E2(5) report, para. 29. As a result, goods financed by a letter of credit in respect of which the presentation of shipping documents took place on 2 May 1990 must have been shipped after 11 April 1990 in order for the claim to be within the Commission's jurisdiction.

46/ E2(1) report, para. 145. The Panel also observed:

> "Adequate proof that a contracting party's inability to perform resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example because the contracting party, in the case of an individual, was killed, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait."

In its E2(5) report, the Panel determined that:

> "it is not sufficient for a claimant merely to allege that the Kuwaiti party was adversely affected by Iraq's invasion and occupation. The claimant must provide specific evidence to demonstrate that the Kuwaiti party's inability to pay the debt was a direct result of Iraq's invasion and occupation of Kuwait" (E2(5) report, para. 75).

See also E2(2) report, para. 89; E2(3) report, para. 154.

47/ E2(1) report, para. 145.

48/ See paragraph 43.

49/ See E2(3) report, para. 199.

50/ See decision 9, para. 10.

51/ E2(3) report, para. 87.

52/ E2(4) report, paras. 161-162.

53/ E2(5) report, para. 128. See also E2(1) report, paras. 213-215, 237-238.

54/ E2(5) report, para. 128, referring to E2(3) report, para. 161.

55/ E2(3) report, para. 100.

56/ E2(6) report, para. 60.

57/ E2(4) report, paras. 145-147; E2(6) report, para. 60.

58/ F2(2) report, para. 40. See also F3(2) report, para. 15. Decision 19 provides that "the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation".

59/ E2(2) report, para. 78; E2(3) report, para. 101; E2(5) report, para. 114.

60/ See E2(5) report, para. 140 and E2(1) report, para. 239.

61/ E2(3) report, para. 82, citing E2(2) report, para. 60 and F1(1.1) report, paras. 94-96. See also E2(5) report, para. 147-148.

62/ E2(3) report, para. 83.

63/ See E2(3) report, para. 79, citing E3(1) report, paras. 177-178.

64/ Paragraph 21(e) of decision 7 provides that any loss suffered as a result of "[h]ostage-taking or other illegal detention" is a direct result of Iraq's invasion and occupation of Kuwait. See also E3(4) report, paras. 772 and 775-776, in which the "E3A" Panel recommended an award of compensation for the "costs of sustaining" hostages.

65/ E2(3) report, para. 145.

66/ E2(3) report, para. 146.

67/ E2(3) report, para. 145.

68/ E2(3) report, para. 146.

69/ E2(3) report, para. 147; E2(5) report, para. 145.

70/ E2(3) report, para. 162; E2(5) report, para. 143. In addition, the Panel has instructed the secretariat to ascertain whether claims have been submitted before the Commission by employees in respect of the same losses. Where duplicate claims have been identified, these have been dealt with in accordance with the procedure described at paragraph 12.

71/ See paragraphs 59 and 75.

72/ E2(1) report, paras. 119-123; E2(3) report, para. 167; E2(5) report, para. 152. As stated by the "E2A" Panel, "[t]he claimant's ownership or interest in the property and the presence of the property in the compensable location at the time of Iraq's invasion and occupation of Kuwait must be verified". (E2(6) report, para. 130.)

73/ A high level of scrutiny is similarly applied with respect to valuation of such claims. See E2(3) report, para. 206; E4(1) report, para. 127.

74/ E2(1) report, paras. 136-140; E2(3) report, para. 169; E2(5) report, para. 103.

75/ E2(3) report, para. 158; E2(5)report, para. 136.

76/ E2(3) report, paras. 157-158; see also E2(1) report, para. 234.

77/ E2(3) report, para. 211.

78/ E2(3) report, para. 211.

79/ E2(3) report, paras. 209-210.

80/ E2(3) report, para. 212.

81/ E2(3) report, para. 213.

82/ E2(3) report, para. 216.

83/ E2(3) report, para. 218; F1(1.1) report, para. 101.

84/ E2(3) report, para. 220.

85/ ITU, Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), International Telecommunications Regulations (Geneva, 1989), article 6.3.

86/ International Telecommunications Regulations, article 6.3.1.

Annex I

LIST OF REASONS STATED IN ANNEX II FOR DENIAL IN WHOLE OR IN PART OF THE CLAIMED AMOUNT

No.	REASON STATED IN ANNEX II	EXPLANATION
	COMPENSABILITY	
1.	"Arising prior to" exclusion.	All or part of the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990 and is outside the jurisdiction of the Commission pursuant to resolution 687 (1991).
2.	Part or all of loss is not direct.	The type of loss in whole or part, is in principle not a direct loss within the meaning of Security Council resolution 687 (1991).
3.	Part or all of loss is outside compensable period.	All or part of the loss occurred outside the period of time during which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait.
4.	Part or all of loss is outside compensable area.	All or part of the loss occurred outside the geographical area within which the Panel has determined that a loss may be directly related to Iraq's invasion and occupation of Kuwait.
5.	Part or all of claim is unsubstantiated.	The claimant has failed to file documentation substantiating its claim; or, where documents have been provided, these do not demonstrate the circumstances or amount of part or all of the claimed loss as required under article 35 of the Rules.
6.	No proof of direct loss.	The claimant has failed to submit sufficient evidence to demonstrate that the loss was a direct result of the invasion and occupation of Kuwait.
7.	No proof of actual loss.	The claimant has not established that any loss was suffered.

No.	REASON STATED IN ANNEX II	EXPLANATION
8.	Failure to comply with formal filing requirements.	The claimant has failed to meet the formal requirements for the filing of claims as specified under article 14 of the UNCC Provisional Rules for Claims Procedure.
9.	Non-compensable bank balance held in Iraq.	The claimant has not established that the funds were exchangeable for foreign currency and, accordingly, that it had a reasonable expectation that it could transfer the funds out of Iraq.
10.	Trade embargo is sole cause.	The loss claimed was caused exclusively by the application of the trade embargo or related measures imposed by or in implementation of resolution 661 (1990) and other relevant resolutions.
11.	Loss is not compensable under Governing Council decision 19.	The claim relates to costs in connection with operations of the Allied Coalition Forces.
	VERIFICATION AND VALUATION	
12.	Part or all of loss is unsupported.	The claimant has failed to file documentation supporting the amount of the claimed loss; or, where documents have been provided, these do not support the amount of part or all of the claimed loss.
13.	Calculated loss is less than loss alleged.	Applying the Panel's valuation methodology, the value of the claim was assessed to be less than that asserted by the claimant.
14.	Insufficient evidence of value.	The claimant has produced insufficient evidence to prove all or part of the value of its losses, as required under article 35 of the Rules.
15.	Failure to establish appropriate efforts to mitigate.	The claimant has not taken such measures as were reasonable in the circumstances to minimise the loss as required under paragraph 23 of Governing Council decision 9 and paragraph 9(IV) of decision 15.

No.	REASON STATED IN ANNEX II	EXPLANATION
16.	Reduction to avoid multiple recovery.	Although the claim is found to be eligible, the Panel concludes that an award has already been made for the same loss in this or another claim before the Commission. Accordingly, the amount of compensation already awarded for this loss has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13, para. 3.
	OTHER GROUNDS	
17.	Interest.	The issue of methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time pursuant to Governing Council decision 16. Moreover, where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.
18.	Principal sum not compensable.	Where the Panel has recommended that no compensation be paid for the principal amounts claimed, a nil award is recommended for interest claimed on such principal amounts.
19.	Claim preparation costs.	The issue of claim preparation costs is to be resolved by the Governing Council at a future date.

Annex II

RECOMMENDED AWARDS FOR THE SEVENTH INSTALMENT OF "E2" CLAIMS

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
1	Australia	Telstra Corporation Limited g/ 4000034	AUD	2,238,813	1,827,632	Payment or relief to others	Evacuation and relocation costs To London & Australia	AUD	1,498,559	AUD	1,088,928	840,301	Part or all of claim is unsubstantiated Part or all of loss is not direct. No proof of direct loss	Paras 15, 102	991,161
						Payment or relief to others	Evacuation and relocation costs To Jeddah	AUD	740,254	SAR	564,970	150,860	Part or all of claim is unsubstantiated Part or all of loss is not direct. No proof of direct loss	Paras 15, 102	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
2	Australia	AWA Defence Industries Pty Limited (now known as BAE Systems Australia Ltd.) 4000035	AUD	416,509	140,307	Payment or relief to others	Evacuation costs	AUD	61,510	AUD	0	0	Part or all of loss is unsupported	Paras. 15, 100-102	0
						Contract	Interrupted service contract: Increased costs (Unproductive salary payments)	AUD	310,164	AUD	0	0	Part or all of loss is unsupported	Paras. 15, 83	
						Payment or relief to others	Support costs: Accommodation and other costs for employees	AUD	25,696	AUD	0	0	Part or all of loss is unsupported	Paras. 15, 106	
						Contract	Interrupted service contract: Increased costs (Increased insurance premiums)	AUD	17,119	AUD	0	0	Part or all of loss is unsupported	Paras. 15, 83	
3	Austria	Steyr Daimler Puch Spezialfahrzeug Aktiengesellschaft 4000111	ATS	36,488,061	3,317,700	Other tangible property	Demonstration armoured vehicles	ATS	36,488,061	ATS	25,964,508	2,307,956	Calculated loss is less than loss alleged	Paras. 116, 11	2,307,956
4	Bahrain	Bahrain Kuwait Insurance Company 4005980	KWD	166,803	577,173	Contract	Unpaid accounts receivable	KWD	166,803	KWD	0	0	Part or all of claim is unsubstantiated Part of all of loss is not direct	Paras. 15, 66	0

			Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
	Submitting Entity	Claimant and UNCC claim no.	Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
5	Belgium	Upjohn NV [now known as Pharmacia & UpJohn NV/SA] 4000188	USD	7,748,111	7,748,111	Contract	Goods lost or destroyed in transit: Value of goods shipped	USD	67,155	USD	67,155	67,155	N/A		67,155
						Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	120,323	USD	0	0	No proof of direct loss.	Paras. 15, 66	
						Contract	Interrupted contract: Goods manufactured but not delivered (Value of goods)	USD	572,650	USD	0	0	Part or all of claim is unsubstantiated	Paras. 15, 71-72.	
						Other tangible property	Vehicles	USD	13,103	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 116.	
						Payment or relief to others	Evacuation costs	USD	148,927	USD	0	0	Part or all of claim is unsubstantiated	Paras. 15, 100-102.	
						Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	6,785,692	USD	0	0	"Arising prior to" exclusion.	Para. 47.	
						Payment or relief to others	Evacuation costs	USD	40,261	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 100-102.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
6	Bosnia-Herzegovina	Unis-Promex - Shareholding Company in Sarajevo 4000090	USD	120,943,233	120,943,233	Contract	Goods and services provided but not paid for: Value of goods and services	USD	100,505,909	USD	0	0	"Arising prior to" exclusion.	Para. 47.	0
						Contract	Goods and services provided but not paid for: Value of goods and services	USD	520,594	USD	0	0	No proof of actual loss.	Paras. 43, 47.	
						Contract	Goods and services provided but not paid for: Value of goods and services	USD	7,548	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 47.	
						Contract	Contract interest	USD	19,206,982	USD	0	0	"Arising prior to" exclusion.	Para. 47.	
						Interest		USD	703,200	USD	0	0	Principal sum not compensable		

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
7	Bosnia-Herzegovina	Zrak-Holding 4000093	USD	19,037,970	19,037,970	Contract	Project contract performed but not paid for: Value of services	USD	3,354,915	USD	0	0	"Arising prior to" exclusion.	Para. 47.	285,403
						Contract	Services provided but not paid for: Contract interest	USD	3,029,325	USD	0	0	"Arising prior to" exclusion.	Para. 47.	
						Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	9,522,101	USD	0	0	"Arising prior to" exclusion.	Para. 47.	
						Contract	Services provided but not paid for: Value of services	USD	1,386,796	USD	19,894	19,894	"Arising prior to" exclusion. Part or all of loss is not direct.	Paras. 47, 49.	
						Contract	Services provided but not paid for: Contract interest	USD	63,591	USD	0	0	Part or all of loss is unsupported.	Paras. 15, 47.	
						Other tangible property	Loss of use of bank balance	USD	107,486	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 120.	
						Contract	Services provided but not paid for: Value of services	USD	1,451,315	USD	265,509	265,509	"Arising prior to" exclusion. Part or all of loss is not direct. Part or all loss is unsupported.	Paras. 47, 15.	
						Contract	Services provided but not paid for: Contract interest	USD	122,439	USD	0	0	Part or all of loss is unsupported.	Paras. 15, 47.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
8	Bulgaria	STN - Systems for Telecommunications & Networks Ltd 4000032	USD	555,300	555,300	Contract	Interrupted project/turnkey contract: Value of services rendered	USD	24,000	USD	0	0	"Arising prior to" exclusion.	Paras. 47, 53	0
						Contract	Interrupted project/turnkey contract: Value of goods partially manufactured but not delivered	USD	298,300	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 54-55.	
						Contract	Interrupted project/turnkey contract: Actual costs incurred	USD	21,000	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 54-55.	
						Contract	Interrupted project/turnkey contract: Loss of profit	USD	210,000	USD	0	0	Part of all of claim is unsubstantiated.	Paras. 15, 54-55.	
9	Egypt	General Egyptian Book Organization 4002673	USD	31,687	31,687	Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	13,618	USD	0	0	"Arising prior to" exclusion.	Para. 47.	0
						Interest		USD	18,069	USD	0	0	Principal sum not compensable.		

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
10	Egypt	International Publishing and Distribution House 4002674	USD	1,998,352	1,998,352	Contract	Goods shipped, received but not paid for: Contract price	USD	2,525	EGP	0	0	"Arising prior to" exclusion.	Para. 47.	331,791
						Contract	Services provided but not paid for: Copyright	USD	21,250	EGP	0	0	"Arising prior to" exclusion.	Para. 47.	
						Contract	Goods shipped, received but not paid for: Contract price	USD	19,186	USD	0	0	"Arising prior to" exclusion.	Para. 47	
						Contract	Goods shipped, received but not paid for: Contract price	USD	4,450	USD	0	0	"Arising prior to" exclusion.	Para. 47.	
						Interest		USD	28,636	USD	0	0	Principal sum not compensable.		
						Other tangible property	Furniture	USD	13,567	USD	8,140	8,140	Part or all of loss is unsupported. Calculated loss is less than loss alleged.	Paras. 15, 116.	
						Business loss or course of dealing	Decline in business: Actual costs incurred	USD	23,800	USD	0	0	Part or all of loss is unsupported.	Para. 15.	
						Other tangible property	Inventory	USD	679,410	USD	323,651	323,651	Insufficient evidence of value.	Paras. 15, 116.	
						Contract	Goods shipped, received but not paid for: Contract price	USD	63,211	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 66.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
10	Egypt	International Publishing and Distribution House (continued) 4002674				Business loss or course of dealing	Increased costs: "Insurances and guarantees"	USD	15,025	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 73.	
						Other tangible property	Cash	USD	1,860	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 116.	
						Real Property	Prepaid rental costs	USD	1,836	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 122.	
						Business loss or course of dealing	Increased costs: Salary payments	USD	5,848	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 96.	
						Business loss or course of dealing	Decline in business: Loss of profit	USD	393,784	USD	0	0	Part or all of claim is unsubstantiated. Insufficient evidence of value.	Para. 124.	
						Interest		USD	723,860	USD	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
11	Egypt	Dar El-Hilal Establishment 4002826	USD	95,684	95,684	Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	44,006	USD	35,094	35,094	Calculated loss is less than loss alleged. "Arising prior to" exclusion.	Paras. 11, 47.	35,094
						Interest		USD	51,678	USD	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	
12	Egypt	General Egyptian Book Organization 4002872	USD	6,395	6,395	Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	3,987	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 66.	0
						Contract	Goods shipped, received but not paid for: Financing costs	USD	2,408	USD	0	0	Part or all of claim is unsubstantiated.	Para. 15.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
13	Egypt	ARENTO: Arab Republic of Egypt National Telecommunications Organization 4002953	USD	52,731,473	52,731,473	Business loss or course of dealing	Course of dealing: Unpaid accounts receivable (Telecommunication exchanges with Iraq 1984 to 1992)	USD	13,956,270	SDR	1,127,314	1,596,762	Part or all of loss is outside compensable period. "Arising prior to" exclusion.	Paras. 39, 47.	9,705,092
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telecommunication exchanges with Iraq 2 Aug 90 to 1 Mar 91)	USD	4,748,571	SDR	1,430,931	2,026,814	Part or all of loss is unsupported.	Paras. 29-31, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Local revenue switching to Iraq 2 Aug 90 to 1 Mar 91)	USD	294,028	SDR	0	0	Part of all of claim is unsubstantiated.	Paras. 29-31, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telecommunication exchanges with Kuwait 2 Aug 90 to 1 Mar 91)	USD	8,540,815	SDR	4,293,550	6,081,516	Part or all of loss is unsupported.	Paras. 29-31, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Local revenue switching to Kuwait 2 Aug 90 to 1 Mar 91)	USD	2,774,561	EGP	0	0	Part of all of claim is unsubstantiated.	Paras. 29-31, 15.	
						Interest		USD	22,417,228	USD	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	

			Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
	Submitting Entity	Claimant and UNCC claim no.	Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
14	Finland	Nokia Cables Ltd. 4000515	USD	13,066,493	13,066,493	Contract	Goods shipped, received but not paid for: Contract price	USD	6,595,286	USD	131,706	131,706	"Arising prior to" exclusion. Part or all of loss is not direct. Calculated loss is less than loss alleged.	Paras. 47-49, 11.	303,405
						Contract	Interrupted contract: Goods partially manufactured but not delivered (Value of obsolete raw materials)	USD	171,699	FIM	736,503	171,699	No proof of direct loss.	Paras. 54-55.	
						Contract	Interrupted contract: Goods partially manufactured but not delivered (Loss of profit)	USD	6,299,508	USD	0	0	Part or all of loss is not direct.	Paras. 54-55.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
15	Finland	Nokia - Maillefer OY 4000790	CHF	3,514,637	2,720,307	Contract	Interrupted project/turnkey contract: Goods lost or destroyed in transit (Contract price)	CHF	447,490	CHF	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 79.	112,578
						Contract	Interrupted project/turnkey contract: Loss of profit	CHF	677,320	CHF	0	0	Part or all of claim is unsubstantiated.	Paras. 71-72.	
						Contract	Contract delay interest	CHF	452,612	CHF	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71, 73.	
						Contract	Contract delay interest	CHF	857,114	CHF	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71, 73.	
						Contract	Interrupted project/turnkey contract: Increased costs (Transportation and storage)	CHF	167,701	CHF	152,431	112,578	Part or all of loss is unsupported.	Paras. 71, 73.	
						Contract	Interrupted project/turnkey contract: Increased costs (Unproductive salary payments)	CHF	912,400	CHF	0	0	Part or all of claim is unsubstantiated.	Paras. 71, 74.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
16	France	Orient Plus 4001745	FRF	3,246,346	619,295	Business loss or course of dealing	Course of dealing: Loss of profit	FRF	148,247	FRF	0	0	Part or all of loss is not direct.	Paras. 91-92.	0
						Business loss or course of dealing	Course of dealing: Loss of profit	FRF	239,621	FRF	0	0	Part or all of loss is not direct.	Paras. 91-92.	
						Business loss or course of dealing	Course of dealing: Loss of profit	FRF	334,478	FRF	0	0	Part or all of loss is not direct.	Paras. 91-92.	
						Business loss or course of dealing	Course of dealing: Loss of profit	FRF	69,000	FRF	0	0	Part or all of loss is not direct.	Paras. 91-92.	
						Business loss or course of dealing	Course of dealing: Loss of profit	FRF	2,455,000	FRF	0	0	Part or all of loss is unsupported.	Paras. 15, 91-92.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
17	France	Pechiney Rhenalu 4001873	FRF	5,422,000	1,034,338	Contract	Interrupted contract: Goods manufactured but not delivered (Value of goods)	FRF	5,046,000	FRF	2,523,000	472,383	Failure to establish appropriate efforts to mitigate.	Paras. 54, 57.	491,388
						Contract	Interrupted contract: Goods manufactured but not delivered (Increased costs for storage & transportation)	FRF	377,000	FRF	101,508	19,005	Part or all of claim is unsubstantiated.	Paras. 15, 54, 73.	
18	Germany	Alcatel SEL AG 4000353	DEM	536,400	343,406	Other tangible property	Demonstration radar equipment	DEM	536,400	DEM	229,022	143,497	Calculated loss is less than loss alleged.	Paras 116, 11.	143,497
19	Germany	Liquidator of F. W. Assman & Söhne GmbH & Co. KG 4000486	DEM	25,083	16,058	Contract	Goods shipped, received but not paid for: Value of goods shipped	DEM	25,083	DEM	0	0	"Arising prior to" exclusion.	Para. 47.	0

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
20	Germany	Detecon Al Saudia Co. Ltd. (Detasad) 4000742	SAR	5,482,000	1,463,818	Contract	Increased costs: Hazard allowances paid to staff	SAR	1,234,000	SAR	82,051	21,909	Part or all of claim is unsubstantiated. Loss is not compensable under Governing Council decision 19.	Paras. 85-86.	433,188
						Contract	Increased costs: Overtime paid to employees	SAR	1,093,000	SAR	0	0	Part or all of claim is unsubstantiated. Loss is not compensable under Governing Council decision 19.	Paras. 85-86.	
						Contract	Increased costs: Staff recruitment costs	SAR	160,000	USD	2,884	2,884	Part or all of loss is outside compensable period. Part or all of loss is not direct.	Para. 85.	
						Contract	Loss of profit	SAR	1,440,000	SAR	1,024,292	273,509	Part or all of loss is unsupported.	Paras. 15, 85.	
						Real Property	Prepaid rental costs	SAR	840,000	SAR	0	0	Reduction to avoid multiple recovery.	Para. 122.	
						Payment or relief to others	Support costs: Security & protective measures	SAR	248,000	SAR	154,897	41,361	Part or all of claim is unsubstantiated. Calculated loss is less than loss alleged.	Paras. 15, 111.	
						Payment or relief to others	Evacuation costs	SAR	467,000	SAR	350,250	93,525	Part or all of claim is unsubstantiated.	Paras. 15, 100-102.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/				
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
21	Germany	Alcatel SEL AG 4000884	DEM	7,889,259	5,050,742	Contract	Goods shipped, received but not paid for: Value of goods shipped	DEM	3,750,270	DEM	0	0	"Arising prior to" exclusion.	Para. 47.	1,289,565
						Contract	Goods shipped, received but not paid for: Contract interest	DEM	337,524	DEM	0	0	Principal sum not compensable.		
						Other tangible property	Test equipment	DEM	69,048	IQD	9,271	29,810	Calculated loss is less than loss alleged.	Paras. 116, 11.	
						Other tangible property	Leased equipment	DEM	3,624	DEM	0	0	No proof of actual loss.	Paras. 116, 15.	
						Other tangible property	Inventory	DEM	3,341,240	USD	1,238,224	1,238,224	Calculated loss is less than loss alleged.	Paras. 116, 11.	
						Other tangible property	Vehicles	DEM	36,532	KWD	5,661	19,588	Calculated loss is less than loss alleged.	Paras. 116, 11.	
						Other tangible property	Tools and equipment	DEM	234,496	IQD	0	0	No proof of actual loss.	Paras. 15, 116.	
						Other tangible property	Tools	DEM	5,000	DEM	625	392	Insufficient evidence of value.	Paras. 15, 116.	
						Other tangible property	Office equipment	DEM	19,800	DEM	2,475	1,551	Insufficient evidence of value.	Paras. 15, 116.	

			Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
	Submitting Entity	Claimant and UNCC claim no.	Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
21	Germany	Alcatel SEL AG (continued) 4000884				Other tangible property	Loss of use of bank balance	DEM	34	IQD	0	0	Insufficient evidence of value. Non-compensable bank balance held in Iraq.	Paras. 15, 120.	
						Other tangible property	Cash	DEM	82,691	IQD	0	0	Insufficient evidence of value.	Paras. 15, 116.	
22	Hungary	Siemens Telefongyár Kft. 4000284	ATS	22,335,930	2,030,908	Contract	Interrupted project/turnkey contract: Repayment of overdraft	ATS	7,321,275	ATS	0	0	Part or all of claim is unsubstantiated. Part or all of loss is not direct. Reduction to avoid multiple recovery.	Paras. 15, 71, 73, 12.	250,609
						Contract	Interrupted project/turnkey contract: Increased costs (Bank charges relating to overdraft)	ATS	9,152	ATS	4,576	407	Part or all of loss is not direct.	Paras. 76, 71, 73.	
						Contract	Interrupted project/turnkey contract: Actual costs incurred (Pipes)	ATS	2,142,943	ATS	753,378	66,967	Part or all of loss is not direct. Failure to establish appropriate efforts to mitigate. Calculated loss is less than loss alleged.	Paras. 76, 71, 57, 11.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
22	Hungary	Siemens Telefongyár Kft. (continued) 4000284				Contract	Interrupted project/turnkey contract: Increased costs (Bank charges relating to payment for pipes)	ATS	2,679	ATS	1,340	119	Part or all of loss is not direct.	Paras. 76, 71, 73.	
						Contract	Interrupted project/turnkey contract: Actual costs incurred (Civil works)	ATS	1,062,939	ATS	0	0	Part or all of claim is unsubstantiated	Paras. 15, 71	
						Contract	Interrupted project/turnkey contract: Increased costs (Bank charges relating to payment for civil works)	ATS	1,329	ATS	665	59	Part or all of loss is not direct.	Para. 76.	
						Contract	Interrupted project/turnkey contract: Actual costs incurred (Insurance premiums)	ATS	155,562	HUF	356,495	5,628	Part or all of claim is outside the compensable period. Part or all of loss is not direct.	Para. 71	
						Contract	Interrupted project/turnkey contract: Actual costs incurred (Salaries)	ATS	747,407	HUF	1,786,977	28,211	No proof of actual loss.	Paras. 15, 71	

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			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
22	Hungary	Siemens Telefongyár Kft. (continued) 4000284				Contract	Interrupted service contract: Actual costs incurred (Performance guarantee)	ATS	70,345	ATS	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71.	
						Contract	Interrupted service contract: Actual costs incurred (Advance payment guarantee)	ATS	41,237	HUF	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71.	
						Contract	Interrupted project/turnkey contract: Actual costs incurred (Salaries)	ATS	155,890	HUF	519,690	8,204	Part or all of loss is not direct.	Paras. 15, 71.	
						Contract	Interrupted project/turnkey contract: Actual costs incurred (Tools)	ATS	335,732	HUF	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71.	
						Contract	Interrupted project/turnkey contract: Actual costs incurred (Advances used for termination payments)	ATS	138,945	KWD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71.	
						Other tangible property	Loss of use of bank balance	ATS	565,809	KWD	0	0	Part or all of claim is unsubstantiated. Part or all of loss is not direct.	Paras. 15, 71.	
						Other tangible property	Inability to exchange Kuwaiti dinar	ATS	6,325	KWD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 116.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
22	Hungary	Siemens Telefongyár Kft. (continued) 4000284				Contract	Interrupted project/turnkey contract: Actual costs incurred (Air fares)	ATS	340,613	HUF	1,440,832	22,747	Part or all of claim is outside the compensable period. Part or all of loss is not direct. Part or all of loss is unsupported.	Paras. 15, 71.	
						Business loss or course of dealing	Increased costs: Winding up costs 1992	ATS	149,963	KWD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 73.	
						Business loss or course of dealing	Increased costs: Winding up costs 1993	ATS	1,155,886	KWD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 73.	
						Contract	Interrupted project/turnkey contract: Loss of profit	ATS	3,236,101	KWD	33,152	114,713	Part or all of loss is not direct. Calculated loss is less than loss alleged.	Paras. 76, 71-72, 11.	
						Contract	Interrupted project/turnkey contract: Loss of profit	ATS	1,280,667	KWD	1,027	3,554	Part or all of loss is not direct. Calculated loss is less than loss alleged.	Paras. 76, 71-72, 11.	
						Interest		ATS	3,415,131	ATS	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
23	India	M/S Telecommunications Consultants India Limited 4000478	USD	1,804,532	1,804,532	Contract	Interrupted project/turnkey contract: Loss of profit	USD	419,433	KWD	0	0	No proof of actual loss. (Substitute contract covering original work.)	Paras. 71-72.	655,514
						Contract	Interrupted service contract: Loss of profit	USD	698,251	KWD	116,916	404,554	Part or all of loss is outside compensable period.	Paras. 71-72, 43.	
						Contract	Services provided but not paid for: Unpaid accounts receivable	USD	110,701	KWD	0	0	No proof of direct loss.	Para. 66.	
						Other tangible property	Office equipment	USD	31,271	KWD	4,234	14,651	Calculated loss is less than loss alleged. Part or all of claim is unsubstantiated.	Paras. 116, 11, 15.	
						Other tangible property	Plant & machinery	USD	381,595	KWD	58,322	201,806	Calculated loss is less than loss alleged. Part or all of claim is unsubstantiated.	Paras. 116, 11, 15.	
						Business loss or course of dealing	Increased costs: Unproductive salary payments	USD	94,275	KWD	0	0	Calculated loss is less than loss alleged. Part or all of claim is unsubstantiated.	Paras. 96, 15.	
						Payment or relief to others	Evacuation costs	USD	69,006	USD	34,503	34,503	Part or all of claim is unsubstantiated.	Paras. 15, 100-102.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
24	India	State Bank of India 4000769	GBP	13,172	26,121,964	Contract	Letters of credit issued by Iraqi banks	GBP	13,172	GBP	0	0	"Arising prior to" exclusion.	Paras. 62-63.	102,125
			USD	26,092,504		Contract	Letters of credit issued by Iraqi banks	USD	26,092,504	USD	102,125	102,125	"Arising prior to" exclusion.	Paras. 62-63.	
			INR	77,881		Contract	Letters of credit issued by Iraqi banks	INR	77,881	INR	0	0	"Arising prior to" exclusion.	Paras. 62-63.	
25	Ireland	The Concentrate Manufacturing Co. of Ireland 4001345	USD	2,450,000	2,450,000	Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	700,000	USD	0	0	"Arising prior to" exclusion.	Para. 47.	1,225,000
						Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	1,400,000	USD	1,050,000	1,050,000	"Arising prior to" exclusion.	Para. 47.	
						Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	350,000	USD	175,000	175,000	"Arising prior to" exclusion.	Para. 47.	
						Interest			No value stated		Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
26	Israel	Rad Network Devices Ltd. 4000413	USD	1,420,000	1,420,000	Business loss or course of dealing	Decline in business: Loss of profit	USD	420,000	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 89.	0
						Business loss or course of dealing	Course of dealing: Delay in new product development	USD	1,000,000	USD	0	0	Part or all of claim is unsubstantiated	Paras. 15, 89.	
27	Italy	Contraves Italiana Spa [now known as Oerlikon Contraves S.p.A.] 4001282	ITL	5,819,344,606	5,049,886	Contract	Goods manufactured but not delivered: Increased costs (Financing costs)	ITL	5,767,909,176	ITL	0	0	Part or all of claim is unsubstantiated. Failure to comply with formal filing requirements (lack of translation)	Paras. 15, 5, 71, 73.	59,610
			USD	30,180		Payment or relief to others	Detention: Support costs (Detainee's expenses)	USD	3,000	USD	3,000	3,000	N/A		
						Business loss or course of dealing	Increased costs: Unproductive salary payments	ITL	11,368,290	ITL	11,368,290	9,971	N/A		
						Payment or relief to others	Personal property reimbursement to employee	ITL	34,500,000	ITL	34,500,000	30,534	N/A		
						Real property	Prepaid rental costs	USD	14,946	KWD	3,500	12,111	Part or all of loss is outside compensable period.	Paras. 122, 43.	
						Payment or relief to others	Personal property reimbursement to employee	USD	12,234	KWD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 113.	
						Payment or relief to others	Detention: Support costs (Telephone calls between dependants and detainees)	ITL	5,567,140	ITL	4,512,390	3,994	Part or all of claim is unsubstantiated.	Paras. 15, 107.	

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			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
28	Japan	Fuji Electric Co. Ltd. 4000953	JPY	65,786,225	450,057	Contract	Goods shipped, received but not paid for: Unpaid accounts receivable	JPY	20,910,404	JPY	0	0	"Arising prior to" exclusion.	Para. 47.	52,217
						Interest		JPY	3,447,777	JPY	0	0	Principal sum not compensable.		
						Contract	Goods manufactured but not delivered: Contract price	JPY	16,670,200	JPY	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 54.	
						Interest		JPY	2,519,291	JPY	0	0	Principal sum not compensable.		
						Contract	Goods manufactured but not delivered: Increased costs (Storage)	JPY	295,000	JPY	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 73.	
						Contract	Goods manufactured but not delivered: Contract price	JPY	16,840,100	JPY	5,894,085	40,001	Failure to establish appropriate efforts to mitigate. Part or all of claim is unsubstantiated.	Paras. 57, 15, 54.	
						Interest		JPY	2,776,670	JPY	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	
						Contract	Goods manufactured but not delivered: Increased costs (Storage)	JPY	230,000	JPY	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 54, 73.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
28	Japan	Fuji Electric Co. Ltd. (continued) 4000953				Contract	Goods lost or destroyed in transit: Value of goods shipped	JPY	1,800,000	JPY	1,800,000	12,216	N/A		
						Interest		JPY	296,783	JPY	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	
29	Japan	Kobe Steel Ltd. 4001086	JPY	5,026,060,664	34,842,708	Contract	Project/Turnkey contract performed but not paid for: Value of services rendered	JPY	4,404,865,196	JPY	0	0	"Arising prior to" exclusion.	Para. 47.	0
						Contract	Project/Turnkey contract performed but not paid for: Contract interest	JPY	621,195,468	JPY	0	0	"Arising prior to" exclusion.	Para. 47.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
30	Jordan	The Ministry of Post and Telecommunications 5000273	USD JOD	9,102,901 21,135,537	41,223,778	Business loss or course of dealing	Course of dealing: Loss of revenue (Telephone traffic with Kuwait Aug 90 to Dec 90)	JOD	1,449,041	SDR	277,401	391,809	Part or all of loss is unsupported.	Paras. 29, 15.	631,585
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telephone traffic with Kuwait Jan 91 to May 91)	JOD	1,299,061	SDR	154,184	212,375	Part or all of loss is unsupported.	Paras. 29, 15.	
						Business loss or course of dealing	Increased costs: Transmission costs (Traffic with Kuwait 1991 to 1995)	USD	7,765,776	SDR	0	0	Part or all of loss is unsupported. Part or all of loss is not direct.	Paras. 34, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Outgoing telex traffic to Kuwait Aug 90 to May 91)	JOD	42,870	SDR	0	0	Part or all of loss is unsupported.	Paras. 29, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Incoming telex from Kuwait Aug 90 to May 91)	USD	39,750	USD	27,401	27,401	Part or all of loss is unsupported.	Paras. 29, 15.	
						Business loss or course of dealing	Increased costs: Phone services for returnees	JOD	14,620,801	JOD	0	0	Part or all of loss is not direct.	Para. 36.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
30	Jordan	The Ministry of Post and Telecommunications (continued) 5000273				Interest		USD	1,297,375	USD	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	
						Interest		JOD	3,723,764	JOD	Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	
31	Luxembourg	Goodyear SA 4001125	USD	117,093	117,093	Contract	Goods shipped, received but not paid for: Unpaid accounts receivable	USD	117,093	USD	0	0	No proof of direct loss.	Para. 66.	0
32	Saudi Arabia	Golden Pages Co. for Printing, Publishing and Distribution 4002477	SAR	3,339,786	891,799	Contract	Interrupted contract: Contract price	SAR	2,560,000	SAR	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 83.	0
						Real property	Prepaid rental costs	SAR	495,390	SAR	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 122.	
						Contract	Interrupted contract: Increased costs (Unproductive salary payments)	SAR	284,396	SAR	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 83.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
33	Sweden	AB Tetra Pak 4001469	SEK	34,509,027	13,957,895	Contract	Goods shipped, received but not paid for: Value of goods shipped	SEK	19,273,246	SEK	5,281,164	901,838	"Arising prior to" exclusion.	Para. 47.	3,819,596
			CHF	10,289,000		Other tangible property	Machines	CHF	10,289,000	CHF	3,920,644	2,895,601	Calculated loss is less than loss alleged. Part or all of claim is unsubstantiated.	Paras. 117, 15.	
						Contract	Interrupted service contract: Loss of profit	SEK	15,235,781	SEK	129,750	22,157	Calculated loss is less than loss alleged. Part or all of loss is unsupported.	Paras. 59, 15.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
34	Sweden	Swedtel AB 4001471	SEK	4,183,718	726,718	Other tangible property	Furniture and equipment	SEK	1,295,858	SEK	120,989	20,661	Part or all of claim is unsubstantiated.	Paras. 15, 116.	20,661
						Payment or relief to others	Evacuation costs	SEK	315,635	SEK	0	0	Part or all of loss is outside compensable period. No proof of direct loss. Part or all of claim is unsubstantiated.	Paras. 43, 15, 102.	
						Payment or relief to others	Personal property reimbursement to employee	SEK	692,552	SEK	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 113.	
						Business loss or course of dealing	Increased costs: Unproductive salary payments	SEK	1,879,673	SEK	0	0	Part or all of claim is unsubstantiated. Part or all of loss is outside compensable period.	Paras. 15, 96, 43.	
35	Sweden	Broddway International AB 4001474	SEK	1,872,040	325,176	Other tangible property	Inventory	SEK	1,872,040	SEK	1,273,757	217,513	Calculated loss is less than loss alleged. Part or all of claim is unsubstantiated.	Paras. 116, 15.	217,513

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
36	Sweden	Telefonaktiebolaget L M Ericsson; Ericsson Radio System Aktiebolag; Telefonaktiebolaget L M Ericsson Technical Office, Saudi Arabia branch office; Telefonaktiebolaget L M Ericsson Technical Office, Kuwait branch office; L M Ericsson, Iraq branch 4001485	IQD	81,599	34,931,441	Business loss or course of dealing	Increased costs: Unproductive salary payments & termination payments	SEK	3,620,631	SEK	0	0	Reduction to avoid multiple recovery. h/ Part or all of claim is unsubstantiated. Failure to establish appropriate efforts to mitigate.	Paras. 12-13, 15, 57, 96.	625,853
			KWD	78,450		Payment or relief to others	Personal property reimbursement to employee	SEK	6,428,174	SEK	0	0	Reduction to avoid multiple recovery. h/ Part or all of claim is unsubstantiated. Reduction to avoid multiple recovery.	Paras. 12-13, 15.	
			USD	1,699,700		Payment or relief to others	Detention: Support costs (Crisis Management Team - Stockholm)	SEK	2,590,093	SEK	0	0	Reduction to avoid multiple recovery. h/ Discretionary expenses. Part or all of claim unsubstantiated.	Paras. 12-13, 107-108, 15.	
			SEK	188,241,879		Payment or relief to others	Detention: Support costs (Crisis Management Team - Baghdad)	SEK	2,217,726	SEK	0	0	Reduction to avoid multiple recovery. h/ Discretionary expenses. Part or all of claim unsubstantiated.	Paras. 12-13, 107-108, 15.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
36	Sweden	Telefonaktiebolaget L M Ericsson et al. (continued) 4001485				Payment or relief to others	Detention: Support costs (Consultants)	SEK	1,162,252	SEK	0	0	Reduction to avoid multiple recovery. h/ Discretionary expenses. Part or all of claim unsubstantiated.	Paras. 12-13, 107-108, 15.	
						Payment or relief to others	Detention: Support costs (Medical costs)	SEK	546,896	SEK	0	0	Discretionary expenses. Part or all of loss is not direct. Part or all of claim unsubstantiated. Reduction to avoid multiple recovery. h/	Paras 107-108, 15, 12 13.	
						Payment or relief to others	Detention: Support costs (Gatherings in Sweden)	SEK	798,811	SEK	0	0	Discretionary expenses. Part or all of claim is unsubstantiated. Reduction to avoid multiple recovery. h/	Paras. 107-108, 15, 12-13.	
						Payment or relief to others	Detention: Support costs (Detainees and dependants' expenses)	SEK	821,424	SEK	0	0	Part or all of claim is unsubstantiated. Reduction to avoid multiple recovery. h/	Paras. 107-108, 15, 12-13.	
						Payment or relief to others	Evacuation costs: From Iraq	SEK	499,946	SEK	0	0	No proof of direct loss. Reduction to avoid multiple recovery. h/	Paras. 102, 15, 12-13.	
						Payment or relief to others	Evacuation and relocation costs: From Saudi Arabia	SEK	7,571,504	SEK	1,754,241	311,256	Discretionary expenses. Part or all of claim is unsubstantiated. Reduction to avoid multiple recovery. h/	Paras. 106, 15, 12-13.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
36	Sweden	Telefonaktiebolaget L M Ericsson et al. (continued) 4001485				Business loss or course of dealing	Increased Costs	SEK	420,628	SEK	257,971	45,498	Part or all of claim is unsubstantiated.	Paras. 15, 74	
						Other tangible property	Vehicle	IQD	3,753	IQD	0	0	No proof of direct loss. Insufficient evidence of value	Paras. 116, 15.	
						Business loss or course of dealing	Increased costs: Termination payments	IQD	75,696	IQD	0	0	Trade embargo is sole cause	Para. 43.	
						Interest		IQD	2,150	IQD	0	0	Part or all of claim is unsubstantiated.	Para. 15	
						Interest		USD	992	USD	0	0	Part or all of claim is unsubstantiated.	Para. 15	
						Interest		SEK	2,731,342	SEK	0	0	Part or all of claim is unsubstantiated.	Para. 15.	
						Contract	Project/Turnkey contract performed but not paid for: Increased costs (Bank guarantee fees)	SEK	19,091	SEK	0	0	Part or all of claim is unsubstantiated.	Paras. 71, 73, 15.	
						Contract	Project/Turnkey contract performed but not paid for: Value of services rendered	SEK	46,038,721	SEK	0	0	"Arising prior to" exclusion. Part or all of claim is unsubstantiated.	Paras. 47, 15.	
						Contract	Project/Turnkey contract performed but not paid for: Value of services rendered	USD	12,297	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 47-49.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
36	Sweden	Telefonaktiebolaget L M Ericsson et al. (continued) 4001485				Interest		SEK	2,417,033	SEK	0	0	Principal sum not compensable.		
						Other tangible property	Furniture, equipment & stock	USD	599,700	USD	149,925	149,925	Insufficient evidence of value.	Paras. 15, 116.	
						Business loss or course of dealing	Loss of profit stemming from loss of stock	USD	1,100,000	USD	0	0	Insufficient evidence of value.	Para. 15.	
						Business loss or course of dealing	Increased costs: Unproductive salary payments & termination payments	SEK	4,145,252	SEK	675,717	119,174	Part or all of claim is unsubstantiated.	Paras. 15, 96.	
						Interest		KWD	78,450	KWD	0	0	Part or all of claim is unsubstantiated.	Para. 15.	
						Interest		SEK	6,895,080	SEK	0	0	Part or all of claim is unsubstantiated.	Para. 15.	
						Contract	Interrupted project/turnkey contract: Increased costs (Bank guarantee fees)	SEK	9,086	SEK	0	0	No proof of actual loss.	Paras. 15, 71, 73.	
						Contract	Interrupted project/turnkey contract: Value of services rendered	SEK	103,755,978	SEK	0	0	Part or all of claim is unsubstantiated. Reduction to avoid multiple recovery. h/	Paras. 15, 66, 12-13.	
						Interest		SEK	5,447,189	SEK	0	0	Principal sum not compensable.		

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
37	Sweden	Kabi Pharmacia AB g/ 4001488	SEK	24,463,459	7,248,697	Contract	Goods shipped, received but not paid for: Value of goods shipped	SEK	24,463,459	SEK	11,789,805	2,013,286	"Arising prior to" exclusion. Part or all of loss is unsupported.	Paras. 47, 15	2,013,286
			DEM	4,684,994		Contract	Goods shipped, received but not paid for: Value of goods shipped	DEM	4,684,994	DEM	0	0	Part or all of loss is not direct. "Arising prior to" exclusion.	Paras. 47, 49.	
38	Switzerland	Mövenpick Produktions AG 4001518	CHF	14,380	11,130	Contract	Goods shipped, received but not paid for: Value of goods shipped	CHF	14,380	CHF	0	0	No proof of direct loss.	Para 66.	0

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
39	Syria	Ministry of Communications 5000125	USD	1,091,214	1,091,214	Business loss or course of dealing	Course of dealing: Loss of revenue (Telephone traffic with Kuwait mid-1990 to 1992)	USD	1,078,424	SDR	260,927	360,895	Part or all of claim is unsubstantiated. Part or all of loss is not direct. Part or all of loss is outside compensable period.	Paras. 29-31, 28.	360.895
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telex traffic with Kuwait mid-1990 to 1992)	USD	2,473	SDR	0	0	Part or all of claim is unsubstantiated.	Paras. 29-31.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telegraph traffic with Kuwait mid-1990 to 1992)	USD	10,316	SDR	0	0	Part or all of claim is unsubstantiated.	Paras. 29-31.	
40	Thailand	Bangkok Bank Limited 4001595	USD	72,540,487	72,540,487	Contract	Letters of credit issued by Iraqi banks	USD	72,540,487	USD	17,556,754	17,556,754	"Arising prior to" exclusion.	Paras. 62-63.	17,556,754

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
41	Tunisia	Union Internationale de Banques 4002593	USD	848,661	1,476,592	Contract	Letters of credit issued by Iraqi banks	USD	748,649	USD	628,385	628,385	"Arising prior to" exclusion. Part of all of claim is unsubstantiated.	Paras. 62-63, 15	628,385
			TND	99,500		Contract	Letters of credit issued by Jordanian banks	USD	100,012	USD	0	0	Part or all of loss is not direct.	Para. 43	
			DEM	800,318		Contract	Loans	TND	31,500	TND	0	0	Part or all of claim is unsubstantiated	Para. 15	
						Contract	Loans	DEM	800,318	DEM	0	0	Part or all of claim is unsubstantiated.	Para. 15	
						Business loss or course of dealing	Decline in business	TND	68,000	TND	0	0	Part or all of claim is unsubstantiated	Para. 15	

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			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
42	Tunisia	Tunisian Ministry of Communications 4002608	TND	319,254,540	370,795,052	Business loss or course of dealing	Course of Dealing: Unpaid accounts receivable (Telephone services to Iraq 1990)	TND	13,931,330	TND	0	0	Part or all of claim is unsubstantiated. Failure to comply with formal filing requirements (lack of translation). "Arising prior to" exclusion.	Paras. 38-39, 15, 5, 47.	0
						Business loss or course of dealing	Course of Dealing: Unpaid accounts receivable (Television services to Iraq 1986 to 1990)	TND	195,323,210	TND	0	0	Part or all of claim is unsubstantiated. Failure to comply with formal filing requirements (lack of translation). "Arising prior to" exclusion.	Paras. 38-39, 15, 5, 47.	
						Business loss or course of dealing	Course of Dealing: Loss of revenue (Telephone & television exchanges with Iraq 1991)	TND	50,000,000	TND	0	0	Part or all of claim is unsubstantiated. Failure to comply with formal filing requirements (lack of translation).	Paras. 29, 15, 5.	
						Business loss or course of dealing	Course of Dealing: Loss of revenue (Telephone & television exchanges with Iraq 1992)	TND	60,000,000	TND	0	0	Part or all of claim is unsubstantiated. Failure to comply with formal filing requirements (lack of translation).	Paras. 29, 15, 5.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
43	Turkey	T. Garanti Bankası AS 4001629	USD	8,628,366	8,628,366	Contract	Letters of credit issued by Iraqi banks	USD	8,628,366	USD	5,689,797	5,689,797	"Arising prior to" exclusion.	Paras. 62-63.	5,689,797
44	Turkey	Directorate General of Posts, Telegraphs and Telephone 5000121	USD	14,897,785	14,897,785	Business loss or course of dealing	Course of dealing: Loss of revenue (Telephone traffic with Iraq & Kuwait 2 Aug 90 to 2 Mar 91)	USD	2,260,100	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 29, 15.	0
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telephone traffic with Iraq & Kuwait 3 Mar 91 to Dec 93)	USD	11,815,990	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 29, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telegraph traffic with Iraq & Kuwait 2 Aug 90 to 2 Mar 91)	USD	5,468	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 29, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telegraph traffic with Iraq & Kuwait 3 Mar 91 to Dec 93)	USD	25,124	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 29, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telex traffic with Iraq & Kuwait 2 Aug 90 to 2 Mar 91)	USD	186,697	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 29, 15.	
						Business loss or course of dealing	Course of dealing: Loss of revenue (Telex traffic with Iraq & Kuwait 3 Mar 91 to Dec 93)	USD	604,406	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 29, 15.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
45	United Kingdom	Vigilant Communications Ltd. 4001815	GBP	36,100	68,631	Other tangible property	Demonstration military communications equipment	GBP	36,100	GBP	32,490	60,167	Calculated loss is less than loss alleged.	Paras. 116, 11.	60,167
46	United Kingdom	Business Magazines International Ltd. 4001910	GBP	142,794	271,471	Contract	Interrupted contract: Goods partially manufactured (Actual costs incurred)	GBP	12,650	GBP	0	0	Insufficient evidence of value.	Paras. 71, 15.	52,891
						Contract	Interrupted contract: Increased costs (Termination payments)	GBP	16,000	GBP	0	0	Insufficient evidence of value.	Paras. 74, 15.	
						Contract	Services provided but not paid for: Value of services rendered	GBP	17,860	GBP	0	0	Part or all of loss is not direct.	Para. 66.	
						Business loss or course of dealing	Course of dealing: Loss of profit	GBP	96,284	GBP	28,191	52,891	Insufficient evidence of value. Part or all of loss is outside compensable period.	Paras. 89, 15, [illegible]3.	
47	United Kingdom	Perkins Engines Group Limited (PEGL) 4001914	GBP	176,021	334,641	Contract	Services provided but not paid for: Value of services rendered	GBP	176,021	GBP	66,099	122,406	Part or all of loss is not direct.	Para. 43.	122,406

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
48	United Kingdom	Alan Dick & Company Limited 4001924	GBP	293,419	557,831	Contract	Goods manufactured but not delivered: Contract price	GBP	274,596	GBP	137,298	254,256	Part or all of loss is unsupported.	Paras. 15, 71-72.	262,882
						Business loss or course of dealing	Increased costs: Unproductive salary payments	GBP	14,062	GBP	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 96.	
						Payment or relief to others	Evacuation costs	GBP	472	GBP	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 100, 102	
						Payment or relief to others	Detention: Support costs (Detainee & dependants' expenses)	GBP	7,101	GBP	4,451	8,626	Part or all of claim is unsubstantiated.	Paras. 15, 107-108.	
49	United Kingdom	John Crane UK Ltd. 4001959	GBP	334,992	636,867	Business loss or course of dealing	Decline in business: Loss of profit	GBP	93,750	GBP	0	0	Part or all of loss is unsupported.	Paras. 15, 89.	208,760
						Business loss or course of dealing	Increased costs: Mobile service centre	GBP	55,783	GBP	6,975	13,235	Calculated loss is less than loss alleged.	Paras. 97, 11.	
						Business loss or course of dealing	Course of dealing: Interest on unpaid amounts	GBP	21,798	GBP	0	0	Part or all of loss is not direct.	Para. 89.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/						
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
49	United Kingdom	John Crane UK Ltd. (continued) 4001959				Business loss or course of dealing	Increased costs: Termination payments	GBP	1,020	GBP	0	0	No proof of actual loss.	Para. 96.	
						Other tangible property	Office furniture and equipment	GBP	9,320	GBP	5,860	10,852	Calculated loss is less than loss alleged.	Paras. 116, 11.	
						Other tangible property	Workshop furniture and equipment	GBP	24,605	GBP	18,454	34,174	Calculated loss is less than loss alleged.	Paras. 116, 11.	
						Other tangible property	Stock	GBP	94,782	GBP	71,087	131,643	Insufficient evidence of value.	Paras. 116, 11.	
						Other tangible property	Furniture and equipment	GBP	11,894	GBP	1,715	3,176	Insufficient evidence of value. Reduction to avoid multiple recovery.	Paras. 116, 15, 12.	
						Payment or relief to others	Repatriation costs for employee	GBP	9,448	GBP	0	0	No proof of actual loss.	Para. 102.	
						Payment or relief to others	Personal property reimbursement to employee	GBP	3,086	GBP	631	1,223	Reduction to avoid multiple recovery.	Paras. 12, 113.	
						Payment or relief to others	Support costs: Rental payments	GBP	1,886	GBP	0	0	No proof of actual loss.	Para. 106.	
						Business loss or course of dealing	Increased costs: Staff costs	GBP	7,619	GBP	7,619	14,457	N/A		

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
50	United Kingdom	Bank of Credit & Commerce International (Overseas) Limited 4002002	USD	16,393,532	16,393,532	Contract	Letters of credit issued by Iraqi banks	USD	16,393,532	USD	0	0	"Arising prior to" exclusion. Trade embargo is sole cause of loss.	Paras. 62-63, 43.	0
51	United Kingdom	McGraw Hill Book Co. Europe 4002051	USD	30,597	30,597	Contract	Goods shipped received but not paid for: Value of goods shipped	USD	2,159	USD	2,149	2,149	Calculated loss is less than loss alleged.	Paras. 11, 66.	4,761
						Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	4,346	USD	2,612	2,612	Calculated loss is less than loss alleged.	Paras. 11, 66.	
						Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	24,092	USD	0	0	"Arising prior to" exclusion.	Para. 47.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
52	United Kingdom	Philips Telecom - Private Mobile Radio [formerly RCS Ltd. and formerly Pye Telecommunications Ltd.] 4002083	GBP	138,602	287,898	Other tangible property	Office equipment	GBP	5,000	GBP	0	0	Part or all of loss is unsupported.	Paras. 15, 116.	0
			IQD	7,587		Other tangible property	Loss of use of bank balance	GBP	25,210	IQD	0	0	Part or all of loss is unsupported. Non-compensable bank balance in Iraq.	Paras. 120, 15.	
						Other tangible property	Loss of use of bank balance	GBP	50,000	GBP	0	0	Non-compensable bank balance in Iraq.	Para. 120.	
						Contract	Interrupted service contract: Value of services rendered	IQD	7,587	IQD	0	0	Part or all of loss is unsupported.	Paras. 15, 47.	
						Contract	Goods shipped, received but not paid for: Value of goods shipped	GBP	34,582	GBP	0	0	"Arising prior to" exclusion.	Para. 47.	
						Contract	Goods shipped, received but not paid for: Value of goods shipped	GBP	18,810	GBP	0	0	Part or all of loss is unsupported.	Paras. 15, 47.	
53	United Kingdom	Vosper Thornycroft (UK) Limited 4002091	GBP	2,372	4,510	Contract	Interrupted contracts: Goods partially manufactured (Actual costs incurred)	GBP	2,372	GBP	237	439	Failure to establish appropriate efforts to mitigate.	Paras. 57, 71-73.	439

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
54	United Kingdom	Books for Students Ltd. 4002172	GBP	72,309	137,470	Contract	Goods shipped, received but not paid for: Contract price	GBP	237	GBP	0	0	Part or all of loss is not direct.	Para. 66.	13,115
						Contract	Goods lost or destroyed in transit: Contract price	GBP	7,082	GBP	7,082	13,115	N/A		
						Contract	Goods lost or destroyed in transit: Contract price	GBP	9,075	GBP	0	0	Part or all of claim is unsubstantiated.	Paras 15, 79.	
						Contract	Goods shipped, received but not paid for: Contract price	GBP	55,915	GBP	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 66.	
55	United Kingdom	GPT Limited 4002175	KWD	85,875	310,102	Other tangible property	Vehicles	KWD	85,875	KWD	85,875	297,145	N/A		303,750
			GBP	6,815		Payment or relief to others	Personal property reimbursement to employee	GBP	6,815	GBP	3,408	6,605	Insufficient evidence of value.	Paras. 15, 113.	
56	United Kingdom	Guardian Royal Exchange Assurance Plc 4002220	USD	364,913	1,262,675	Contract	Unpaid accounts receivable: Insurance premiums	KWD	364,913	KWD	91,228	315,668	Part or all of claim is unsubstantiated. Part or all of loss is not direct.	Paras. 15, 66.	315,668

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
57	United States of America	NCR Corporation [Formerly AT&T Global Information Solutions Company] 4000615	USD	10,579,016	10,579,016	Other tangible property	Furniture and equipment	USD	135,931	USD	135,931	135,931	N/A		945,421
						Other tangible property	Inventory	USD	58,753	USD	49,350	49,350	Calculated loss is less than loss alleged.	Paras. 116, 11.	
						Business loss or course of dealing	Increased costs: Termination payments	USD	815,298	USD	760,140	760,140	Part or all of claim is unsubstantiated. Part or all of loss is not direct.	Paras. 15, 96.	
						Business loss or course of dealing	Decline in business: Loss of profit	USD	3,289,350	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 89.	
						Income producing property	Total loss: Closure of branch	USD	6,279,684	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 124.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
58	United States of America	Sony Trans Com Inc 4000624	USD	905,399	905,399	Contract	Interrupted service contract: Loss of profit	USD	821,590	USD	12,233	12,233	Calculated loss is less than loss alleged.	Para. 59.	75,979
						Contract	Services provided but not paid for: Value of services rendered	USD	47,109	USD	35,332	35,332	"Arising prior to" exclusion. Calculated loss is less than loss alleged. Insufficient evidence of value.	Paras. 47, 15	
						Other tangible property	In-flight entertainment equipment	USD	36,700	USD	28,414	28,414	Calculated loss is less than loss alleged.	Para. 117.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
59	United States of America	Unisys Corporation g/ 4000632	USD	3,699,554	3,699,554	Contract	Interrupted service contract: Value of services rendered	USD	1,210,561	SAR	0	0	Part or all of loss is not direct.	Para. 81	215,045
						Contract	Interrupted service contract: Loss of profit	USD	317,140	USD	0	0	Part or all of loss is not direct.	Paras. 83, 81	
						Contract	Interrupted service contract: Loss of profit	USD	71,279	USD	34,934	34,934	Calculated loss is less than loss alleged.	Para. 83	
						Contract	Interrupted service contract: Increased costs (Termination payments)	USD	877,783	USD/ SAR	0	0	Part or all of loss is not direct.	Paras. 83, 81	
						Contract	Interrupted service contract: Consequential costs (Performance bond)	USD	890,000	USD	0	0	Part or all of loss is not direct.	Paras 83, 81	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
59	United States of America	Unisys Corporation (continued) 4000632				Payment or relief to others	Evacuation costs: Transportation	USD	332,791	USD	153,857	153,857	Calculated loss is less than loss alleged. Part or all of loss is unsupported.	Paras. 15, 100, 102.	
						Payment or relief to others	Evacuation costs: Accommodation & other living expenses			GBP	2,193	4,250	Calculated loss is less than loss alleged. Part or all of loss is unsupported.	Paras. 15, 100, 102.	
						Payment or relief to others	Evacuation costs: Other costs			SAR	82,406	22,004	Calculated loss is less than loss alleged. Part or all of loss is unsupported.	Paras. 15, 100, 102.	
60	United States of America	American Telephone and Telegraph Corporation g/ 4002228	USD	584,787	584,787	Contract	Interrupted service contract: Contract price	USD	134,011	USD	0	0	Insufficient evidence of value.	Paras. 15, 71, 72.	138,461
						Contract	Interrupted project/turnkey contract: Actual costs incurred	USD	256,885	USD	0	0	Insufficient evidence of value.	Paras. 15, 71.	
						Payment or relief to others	Evacuation costs	USD	193,892	SAR	217,973	58,204	Part or all of loss is not direct. Part or all of claim is unsubstantiated.	Paras. 15, 100, 102.	
										DEM	60,586	40,257			
										USD	40,000	40,000			

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub-category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
61	United States of America	Honeywell Inc. 4002235	USD	2,500,650	2,500,650	Contract	Interrupted project/turnkey contract: Unpaid accounts receivable	USD	1,575,161	KWD	0	0	No proof of direct loss.	Para. 66.	0
						Contract	Interrupted project/turnkey contract: Loss of profit	USD	350,171	KWD	0	0	Insufficient evidence of value.	Paras. 15, 71-72.	
						Contract	Interrupted service contract: Loss of profit	USD	280,587	KWD	0	0	Insufficient evidence of value.	Paras. 15, 71-72.	
						Contract	Interrupted project/turnkey contract: Increased costs (Financing costs)	USD	60,300	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71, 73.	
						Claim preparation costs		USD	31,272	USD	Awaiting decision	Awaiting decision	To be resolved by Governing Council.	Para. 142.	
						Interest		USD	203,159	USD	0	0	Principal sum not compensable.		

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
62	United States of America	Pepsico Puerto Rico, Inc. (successor to The Pepsi Cola Manufacturing Co., Inc.) 4002252	USD	12,144,000	12,144,000	Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	5,600,000	USD	3,500,000	3,500,000	"Arising prior to" exclusion.	Para. 47.	3,798,108
						Contract	Interrupted contract: Goods manufactured but not delivered (Loss of profit)	USD	6,088,000	USD	298,108	298,108	Insufficient evidence of value. Failure to establish appropriate efforts to mitigate. Part or all of loss is outside compensable period.	Paras 15, 57, 43.	
						Contract	Goods shipped, received but not paid for: Contract price	USD	456,000	USD	0	0	"Arising prior to" exclusion.	Para. 47.	
						Interest			No value stated		Awaiting decision	Awaiting decision	To be determined per Governing Council decision 16.	Paras. 140-141.	
						Claim preparation costs			No value stated		Awaiting decision	Awaiting decision	To be resolved by Governing Council.	Para. 142.	

	Submitting Entity	Claimant and UNCC claim no.	Total amount claimed, including permissible amendments a/			Reclassified amount d/				Decision of the Panel of Commissioners e/					
			Amount claimed in original currency b/		Amount claimed restated in USD c/	Type of loss	Sub category	Amount claimed in original currency		Amount recommended in original currency or currency of loss f/		Amount recommended in USD	Reasons for denial or reduction of award	Report citation	Total of amount recommended in USD
63	United States of America	ITT Corporation, ITT Gilfillan Division 4002511	USD	323,746	323,746	Contract	Interrupted service contract: Loss of profit	USD	240,788	USD	0	0	Part or all of claim is unsubstantiated.	Paras. 15, 71-72.	68,282
						Payment or relief to others	Personal property reimbursement to employee	USD	71,486	USD	68,282	68,282	Part or all of loss is not direct.	Para. 113.	
						Claim preparation costs		USD	11,472	USD	Awaiting decision	Awaiting decision	To be resolved by Governing Council.	Para. 142.	
64	Corporate claims directly submitted	Neumaticos Goodyear SA 4005781	USD	167,922	167,922	Contract	Goods shipped, received but not paid for: Value of goods shipped	USD	167,922	USD	0	0	No proof of direct loss.	Paras. 15, 66.	0

Notes to table of recommendations

a/ In accordance with the Governing Council's decision taken at its twenty-seventh session held in March 1998, the Panel has not considered unsolicited supplements or amendments submitted after 11 May 1998 to previously filed claims. Accordingly, the total claimed amounts stated in this table include only those supplements and amendments to the original claimed amounts submitted prior to 11 May 1998 or submitted after that date where these comply with the requirements of the Commission. The Panel observes that, in a few cases, there were discrepancies between the total amount asserted by the claimant in the claim form and the sum of the individual loss items stated by the claimant in the statement of claim. In such circumstances, the Panel adopts the total value asserted in the claim form.

b/ Currency codes: ATS (Austrian schilling), AUD (Australian dollar), CHF (Swiss franc), DEM (Deutsche mark), FIM (Finnish markka), FRF (French franc), XFO (Gold franc), GBP (Pound sterling), HUF (Hungarian Forint), INR (Indian rupee), IQD (Iraqi dinar), ITL (Italian lire), JOD (Jordanian dinar), JPY (Japanese yen), KWD (Kuwaiti dinar), SAR (Saudi Arabian riyal), SDR (Special drawing rights), SEK (Swedish kroner), TND (Tunisian dinar), USD (United States dollar).

c/ In the column entitled "Total amount claimed restated in USD", for claims originally expressed by the claimant in currencies other than United States dollars, the secretariat has converted the amount claimed to United States dollars based on August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, or in cases where this exchange rate is not available, the latest exchange rate available prior to August 1990. This conversion is made solely to provide an indication of the amount claimed in United States dollars for comparative purposes. In contrast, the date of the exchange rate that was applied to calculate the recommended amount is described in paragraphs 131 to 139.

d/ In the columns under the heading entitled "Reclassified claim", the Panel has re-categorized certain of the losses using standard classifications, as appropriate, since many claimants have presented similar losses in different ways (see columns entitled "Type of loss" and "Sub-category"). This procedure is intended to ensure consistency, equality of treatment and fairness in the analysis of the claims and is consistent with the practice of the Commission. In addition, the amount stated in the claim form for each element of loss is also reflected.

e/ As used in this table, "N/A" means not applicable.

f/ The secretariat has recalculated the amount claimed in the currency of the original loss which, on occasion, has been different from the amount stated in the claim form.

g/ Part or all of this claim is brought on behalf of a subsidiary by a parent company. See paragraph 14 above.

h/ The asserted total value of losses forming the subject-matter of this claim is subject to deductions for compensation previously awarded by the Commission or for insurance payments disclosed by the claimant. Such deductions have been taken into account in calculating the compensation recommended.

Annex VII

Decision concerning the seventh instalment of E2 claims taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the seventh instalment of "E2" claims, covering 64 claims, 1/ and a request from the Government of the Republic of Tunisia for the withdrawal of one claim included in the Panel's report,

1. Approves the recommendations made by the panel of Commissioners, with the exception of the one withdrawn claim and accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report, with the exception of the one withdrawn claim. The aggregate amounts per country, based on the recommendations contained in annex II of the report, are as follows:

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* Previously issued as document S/AC.26/Dec.127 (2001).

1/ The text of the report appears in document S/AC.26/2001/11 (annex VI above).

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Australia	1	1	2,167,609	991,161
Austria	1	-	3,317,700	2,307,956
Bahrain	-	1	577,173	nil
Belgium	1	-	7,748,111	67,155
Bosnia and Herzegovina	1	1	139,981,203	285,403
Bulgaria	-	1	555,300	nil
Egypt	3	2	54,863,591	10,071,977
Finland	2	-	15,786,800	415,983
France	1	1	1,653,633	491,388
Germany	3	1	6,874,024	1,866,250
Hungary	1	-	2,030,908	250,609
India	2	-	27,926,496	757,639
Ireland	1	-	2,450,000	1,225,000
Israel	-	1	1,420,000	nil
Italy	1	-	5,049,886	59,610
Japan	1	1	35,292,765	52,217
Jordan	1	-	41,223,778	631,585
Luxembourg	-	1	117,093	nil
Saudi Arabia	-	1	891,799	nil
Sweden	5	-	57,189,927	6,696,909
Switzerland	-	1	11,130	nil
Syrian Arab Republic	1	-	1,091,214	360,895
Thailand	1	-	72,540,487	17,556,754
Tunisia	-	1	370,795,052	nil
Turkey	1	1	23,526,151	5,689,797
United Kingdom	10	2	20,296,225	1,344,839

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
United States	6	1	30,737,152	5,241,296
Corporate claim directly submitted by Neumaticos Goodyear SA (claim No. 4005781)	-	1	167,922	nil
Total	44	19	926,115,207	56,364,423

3. *Reaffirms* that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. *Recalls* that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. *Takes note* of the withdrawal of the claim submitted by the Government of the Republic of Tunisia, which was received after the panel signed the report and submitted its report and recommendations to the Governing Council, and

6. *Requests* the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex VIII

Report and recommendations made by the Panel of Commissioners concerning the thirteenth instalment of E3 claims*

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* Previously issued as document S/AC.26/2001/12.

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37. Recommended compensation for ZDH 251

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning eighteen claims included in the thirteenth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules.

2. One of the claims, that of Daewoo Corporation, filed with the Commission by the Government of the Republic of Korea was withdrawn during the proceedings. (See paragraph 233, infra).

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

3. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

4. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact directly resulted from Iraq's invasion and occupation of Kuwait. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the thirteenth instalment

5. On 7 February 2000, the Panel issued a procedural order relating to the claims. In view of the complexity of the issues raised, the volume of the documentation underlying the claims and the compensation sought by the claimants, the Panel decided to classify each of the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules. The

Panel thus decided to complete its review of the claims within 12 months of the date of its procedural order of 7 February 2000.

6. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by the claimants in reply to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the twenty-ninth report of the Executive Secretary issued on 11 November 1999 in accordance with article 16 of the Rules.

7. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants accounting and loss adjusting firms, both with international and Persian Gulf experience, to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed its expert consultants to prepare comprehensive valuation reports on each of the claims.

8. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. Amending claims after filing

9. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council permitted claimants to file unsolicited supplements up to and including 11 May 1998. A number of the claimants included in the thirteenth instalment had submitted several supplements to their claimed amount up to 11 May 1998. In this report, the Panel has taken into consideration such supplements up to 11 May 1998. The Panel has only considered those losses contained in the original claim, as supplemented by the claimants, up to 11 May 1998, except where such losses have been withdrawn or reduced by the claimants. Where the claimants reduced the amount of their losses the Panel has considered the reduced amount. This, however, does not preclude corrections relating to arithmetical and typographical errors.

D. The claims

10. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following claims:

(a) Walter Bau-Aktiengesellschaft, a corporation organised according to the laws of Germany, which seeks compensation in the amount of 26,058,924 United States dollars (USD);

(b) Wayss & Freytag AG, a corporation organised according to the laws of Germany, which seeks compensation in the amount of USD 71,242,946;

(c) Westinghouse-Controlmatic GmbH, a corporation organised according to the laws of Germany, which seeks compensation in the amount of USD 2,812,312;

(d) Wolff & Müller GmbH & Co KG, an incorporated limited partnership organised according to the laws of Germany, which seeks compensation in the amount of USD 22,824,761;

(e) Ansal Properties and Industries Ltd., a corporation organised according to the laws of India, which seeks compensation in the amount of USD 27,926,187;

(f) M/s. Bhandari Builders (Private) Limited, a corporation organised according to the laws of India, which seeks compensation in the amount of USD 24,041,647;

(g) M/s. Bhandari Builders (Private) Limited, a corporation organised according to the laws of India, which seeks compensation in the amount of USD 105,251,227;

(h) Byucksan Development Co Ltd., a corporation organised according to the laws of the Republic of Korea, which seeks compensation in the amount of USD 36,626,418;

(i) Nam Kwang Engineering & Construction Co. Ltd., a corporation organised according to the laws of the Republic of Korea, which seeks compensation in the amount of USD 17,450,954;

(j) Internationale Funderingsgroep bv, a corporation organised according to the laws of the Netherlands, which seeks compensation in the amount of USD 2,166,705;

(k) National Construction Company (Pakistan) Limited, a corporation organised according to the laws of Pakistan, which seeks compensation in the amount of USD 45,801,828;

(l) Mercator - Mednarodna Trgovina, d.d. (Mercator - International Trade, Ltd.), a corporation organised according to the laws of Slovenia, which seeks compensation in the amount of USD 1,681,620;

(m) NCC International AB, a corporation organised according to the laws of Sweden, which seeks compensation in the amount of USD 26,589,473;

(n) Fusas Fuat Soylu Construction and Industry Inc. Co., a corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 4,403,320;

(o) Hasan Canpoyraz Insaat Müteahhitligi, a corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 2,475,273;

(p) Kiska Insaat Taahhüdü Isleri A.S. (Kiska Construction Corporation), a corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 2,920,161; and

(q) ZDH Enternasyonal Insaat Taahhüt Ortakligi (ZDH International Construction Group), a corporation organised according to the laws of Turkey, which seeks compensation in the amount of USD 2,348,317.

II. LEGAL FRAMEWORK

A. Applicable law

11. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1998/13) (the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

12. As set forth in paragraph 16 of the "Report and Recommendations Made by the Panel of Commissioners concerning the Third Instalment of 'E3' Claims (S/AC.26/1999/1) (the "Third Report"), the Panel determined that "Iraq" as used in decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

C. The "arising prior to" clause

13. In paragraphs 79-81 of its First Report, the Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

14. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

15. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

16. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

E. Loss of profits

17. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

18. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to realise a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In order to establish with "reasonable certainty" a loss of profits claim, the Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected, for the project.

F. Date of loss

19. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

G. Interest

20. According to decision 16 (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

21. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, 2 August 1990.

H. Currency exchange rate

22. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

23. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

24. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, from 2 August 1990.

I. Evacuation losses

25. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

J. Valuation

26. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

27. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recommendation of no compensation for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

28. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

K. Formal requirements

29. Claims submitted to the Commission must meet certain formal requirements established by the Governing Council. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. If it is determined that a claim does not meet the formal requirements as set forth in the article 14 of the Rules, the claimant is sent a notification under article 15 of the Rules (the "article 15 notification") requesting the claimant to remedy the deficiencies.

L. Evidentiary requirements

30. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

31. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".

32. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the "article 34 notification"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

33. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. WALTER BAU-AKTIENGESELLSCHAFT

34. Walter Bau-Aktiengesellschaft ("Walter Bau") is a corporation organised according to the laws of Germany operating in the construction industry. Walter Bau seeks compensation in the amount of 1,622,280 Deutsche Mark (DEM) (USD 1,038,592) for contract losses and interest. Walter Bau also seeks compensation in the amount of DEM 39,081,758 (USD 25,020,332) for what it describes in the Statement of Claim as a "Subsidiary Motion". This amount includes a claim for interest.

35. Walter Bau stated that it received partial compensation in the amount of DEM 1,708,469 for its contract losses from Hermes - Kreditversicherungs AG ("Hermes"), the German export credit agency. Walter Bau has taken this payment into account in the calculation of the total amount of its claim before the Commission.

Table 1. Walter Bau's claim

Claim element	Claim amount (USD)
Contract losses	547,958
"Subsidiary Motion"	25,020,332
Interest	490,634
Total	26,058,924

A. Contract losses and "Subsidiary Motion"

1. Facts and contentions

(a) Contract losses

36. Walter Bau seeks compensation in the amount of DEM 855,910 (USD 547,958) for contract losses. The losses were allegedly incurred in connection with two contracts it entered into on 21 October 1981 with the Ministry of Housing and Construction, State Organization for Buildings, of Iraq (the "Ministry").

37. The contracts provided for the construction of the Baghdad University Athletic College (the "University Project") and a guesthouse in Baghdad ("Project No. 305"). The amounts claimed for the University Project and for Project No. 305 are DEM 120,671 (USD 77,254) and DEM 735,239 (USD 470,704), respectively.

(i) University Project

38. The contract price was 18,795,300 Iraqi dinars (IQD). On 9 November 1983, the payment terms under the contract were amended and a financing agreement was put into place. Under the financing agreement, Walter Bau

was to receive payments under the contract in both United States dollars and Deutsche Mark. Ten per cent of the contract value was to be paid in cash (the "cash portion"). The remaining 90 per cent was to be paid in Deutsche Mark out of a buyer's credit made available by Ausfuhrkreditgesellschaft mbH ("AKA"), the German export finance corporation.

39. The contract provided for a maintenance period of 18 months from the initial taking over of the project. The amended terms of the contract provided for the release of retention monies in two equal portions. However, the contract did not state when the retention monies were to be released.

40. Walter Bau seeks to recover the second-half cash portion of the retention monies payable in Deutsche Mark. Walter Bau also seeks to recover the cash portion of the amount stated in the final measurement certificate. The final measurement certificate indicates that the amount due to Walter Bau was calculated after deductions were made in accordance with the terms of the contract. Walter Bau seeks compensation in the amount of DEM 120,671 (USD 77,254), net of compensation received from Hermes.

(ii) Project No. 305

41. The contract price was IQD 14,154,518. The contract provided for a maintenance period of 18 months from the date of the issue of the preliminary completion certificate. The retention monies were to be released in two equal parts, firstly, on the issue of the preliminary completion certificate, and secondly, after the expiry of the maintenance period and subject to the issue of the final maintenance certificate.

42. On 17 January 1989, the State Commission for Supervision and Pursuance of Iraq ("SCSP") issued the final acceptance certificate ("FAC"). It is unclear from the evidence provided whether the FAC fulfilled the same purpose as the final maintenance certificate referred to in the contract. The FAC indicates that the project works were completed on 15 October 1983 and that the maintenance period expired on 16 July 1985.

43. The Ministry issued a "Final Statement" on 19 September 1989. The "Final Statement" stipulated that the second half cash portion of the retention monies would be released after a document called the "acquittance certificate" was obtained from the "Government offices".

44. On 10 June 1990, the Ministry of Finance of Iraq issued the "acquittance certificate". This certificate indicates that Walter Bau did not owe any money and that no amounts were outstanding against Walter Bau for the period from 12 October 1981 to 16 July 1985.

45. Walter Bau seeks compensation in the amount of DEM 735,239 (USD 470,704) for the second half of the retention monies, net of

compensation received from Hermes. Walter Bau alleged that it never received the retention monies because of Iraq's invasion and occupation of Kuwait.

(b) "Subsidiary Motion"

46. Walter Bau seeks compensation for a "Subsidiary Motion", which is a contingent claim for compensation for the amount paid by Walter Bau to AKA. AKA submitted a claim for its losses even though Walter Bau has compensated it.

47. Walter Bau is aware that AKA has filed a claim with the Commission for the same losses. Walter Bau stated that it seeks compensation in the amount of DEM 39,081,758 (USD 25,020,332) by way of a "Subsidiary Motion" as a protective measure to ensure that its claim is before the Commission if AKA's claim is rejected.

2. Analysis and valuation

(a) Contract losses

48. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

49. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Walter Bau had a contract with Iraq.

(i) University Project

50. As evidence of its contract losses, Walter Bau provided a copy of the original contract and subsequent amendments and supplements to the contract. Walter Bau also provided copies of the certificates in respect of the second-half cash portion of the retention monies and the final measurement. Both these certificates are dated 29 June 1989 and have been signed by the SCSP. It also provided a copy of a letter dated 1 November 1991 from Hermes, which indicates the payment of compensation in the amount of DEM 163,377.

51. Walter Bau asserted that the outstanding amounts were due on 29 June 1989. The terms of the certificates confirm this. The Panel therefore finds that the work to which the claim for contract losses relates was performed prior to 2 May 1990.

52. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(ii) Project No. 305

53. As evidence of its contract losses, Walter Bau provided a copy of the contract, the FAC dated 17 January 1989, the "acquittance certificate" dated 10 June 1990, the "Final Statement" dated 19 September 1989, and a letter dated 13 December 1991 from Hermes indicating the payment of compensation in the amount of DEM 1,545,092.

54. The second-half cash portion of the retention monies was to be released after the expiry of the maintenance period and subject to the issue of the final maintenance certificate.

55. The maintenance period expired on 16 July 1985. However, it is not clear from the evidence provided whether the final maintenance certificate was issued. Walter Bau did not provide a copy of the final maintenance certificate, and as stated at paragraph 42, supra, the Panel has been unable to determine whether the FAC fulfilled the same purpose as the final maintenance certificate. The "Final Statement" also required the issue of the "acquittance certificate" from the customs department of Iraq prior to the release of the retention monies.

56. The Panel notes that the "Final Statement" was issued more than four years after the expiry of the maintenance period. Walter Bau stated that "SCSP did not issue the final statement according to the contract conditions. After numerous approaches over years SCSP issued the final statement 4 years later."

57. In the article 34 notification, Walter Bau was requested to explain why the retention monies remained outstanding at 2 August 1990 when the maintenance period expired on 16 July 1985. In its reply, Walter Bau simply stated that "the retention money remained outstanding since 16 July 1985 because the Client [Ministry] did not pay the retention money."

58. The Panel finds that Walter Bau failed to prove that the delay in the issue of the "Final Statement" and the subsequent failure of the Ministry to release the retention monies were a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no compensation.

(b) "Subsidiary Motion"

59. The Panel has found in its previous reports that it does not have jurisdiction over contingent claims. The Panel therefore recommends no compensation for the "Subsidiary Motion".

3. Recommendation

60. The Panel recommends no compensation for contract losses and the "Subsidiary Motion".

B. Interest

61. As the Panel recommends no compensation for contract losses and the "Subsidiary Motion", there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Walter Bau

Table 2. Recommended compensation for Walter Bau

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	547,958	nil
"Subsidiary Motion"	25,020,332	nil
Interest	490,634	nil
Total	26,058,924	nil

62. Based on its findings regarding Walter Bau's claim, the Panel recommends no compensation.

IV. WAYSS & FREYTAG AG

63. Wayss & Freytag AG ("Wayss & Freytag") is a corporation organised according to the laws of Germany operating in the construction industry. In its original submission, Wayss & Freytag sought compensation in the amount of USD 258,661 for contract losses, and USD 132,452 for interest from 1 October 1989 to 31 December 1993. Wayss & Freytag also sought compensation in the amount of DEM 110,781,062 (USD 70,922,575) for what it describes in the Statement of Claim as a "Subsidiary Motion". This amount includes a claim for interest.

64. In its reply to the article 15 notification, Wayss & Freytag claimed additional interest and increased the claimed amounts for both the contract losses and the "Subsidiary Motion". The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Wayss & Freytag. The Panel notes that, in its reply to the article 15 notification, Wayss & Freytag claimed interest on contract losses from 2 August 1990 to 30 June 1999. For the reasons stated in paragraph 9, supra, the Panel has considered the claim for interest from 2 August 1990 to 31 December 1993 in the reduced amount of USD 61,710.

65. The Panel therefore considered the amount of USD 320,371 for contract losses and interest and DEM 110,781,062 (USD 70,922,575) for the "Subsidiary Motion".

66. Wayss & Freytag stated that it received partial compensation in the amount of DEM 330,181 for its contract losses from Hermes - Kreditversicherungs AG ("Hermes"), the German export credit agency. Wayss & Freytag has not taken this payment into account in the calculation of the total amount of its claim before the Commission.

Table 3. Wayss & Freytag's claim

Claim element	Claim amount (USD)
Contract losses	258,661
"Subsidiary Motion"	70,922,575
Interest	61,710
Total	71,242,946

A. Contract losses and "Subsidiary Motion"

1. Facts and contentions

(a) Contract losses

67. Wayss & Freytag seeks compensation in the amount of USD 258,661 for contract losses. The losses were allegedly incurred in connection with a

contract it entered into on 5 September 1981 with Amanat Al Assima, the local city government authority of Baghdad ("Amanat"), for the construction of the Salah Al-Deen Al-Ayubi Expressway in Iraq (the "Project"). The contract price was IQD 68,519,528, subject to variation orders and final measurement.

68. The Project works were substantially completed by 11 October 1984, whereupon the maintenance period of 12 months commenced. On 11 January 1986, an entity described as the "Final Receiving Committee" recommended the final taking over of the Project works. On 18 February 1986, the "Financial Affairs Department of the City of Baghdad" issued the "Quittance Certificate to disburse the final measurement and to settle the account" of Wayss & Freytag. At this time, the contract price had increased to IQD 80,642,845.

69. Wayss & Freytag asserted that by 5 September 1989 it had received nearly all outstanding payments in local or foreign currency, except for the amount of IQD 50,000, which was payable in local currency, and the amount of IQD 76,579, which was payable in United States dollars. On 3 October 1989, Wayss & Freytag received a cheque from Amanat in the amount of IQD 50,000. On 30 October 1989, the State Board of Taxes of Iraq issued a "non objection certificate" for the transfer of IQD 76,579. Wayss & Freytag alleged that it never received the amount of IQD 76,579 because of Iraq's invasion and occupation of Kuwait.

70. Wayss & Freytag asserted that during 1990, negotiations were ongoing to settle the outstanding payment. Wayss & Freytag alleged that in June 1990 the relevant authorities advised it that it would soon receive the payment. Wayss & Freytag stated that the negotiations were terminated because of Iraq's invasion and occupation of Kuwait.

(b) "Subsidiary Motion"

71. Wayss & Freytag seeks compensation for a "Subsidiary Motion", which it describes as a contingent claim for compensation for the amount paid by Wayss & Freytag to Ausfuhrkreditgesellschaft mbH ("AKA"), the German export finance corporation. AKA submitted a claim for its losses even though it has been compensated by Wayss & Freytag as well as by Hermes.

72. Wayss & Freytag is aware that AKA has filed a claim with the Commission for the same losses. Wayss & Freytag stated that it seeks compensation in the amount of DEM 110,781,062 (USD 70,922,575) by way of a "Subsidiary Motion" as a protective measure to ensure that its claim is before the Commission if AKA's claim is rejected.

2. Analysis and valuation

(a) Contract losses

73. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

74. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Wayss & Freytag had a contract with Iraq.

75. As evidence of its contract losses, Wayss & Freytag provided a copy of the contract along with the general terms and conditions, and various clearance certificates issued by the Iraqi authorities between October 1987 and October 1989.

76. Wayss & Freytag completed the Project works in 1984. The maintenance period expired some time in 1985. The "quittance certificate" was issued on 18 February 1986. On 30 October 1989, the State Board of Taxes of Iraq issued a "non objection certificate" for the transfer of IQD 76,579. The Panel therefore finds that the work to which the claim for contract losses relates was performed prior to 2 May 1990.

77. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(b) "Subsidiary Motion"

78. The Panel has found in its previous reports that it does not have jurisdiction over contingent claims. The Panel therefore recommends no compensation for the "Subsidiary Motion".

3. Recommendation

79. The Panel recommends no compensation for contract losses and the "Subsidiary Motion".

B. Interest

80. As the Panel recommends no compensation for contract losses and the "Subsidiary Motion", there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Wayss & Freytag

Table 4. Recommended compensation for Wayss & Freytag

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	258,661	nil
"Subsidiary Motion"	70,922,575	nil
Interest	61,710	nil
Total	71,242,946	nil

81. Based on its findings regarding Wayss & Freytag's claim, the Panel recommends no compensation.

V. WESTINGHOUSE-CONTROLMATIC GMBH

82. Westinghouse-Controlmatic GmbH ("Westinghouse") is a corporation organised according to the laws of Germany operating in the electrical, instrumentation and automation industries. Westinghouse seeks compensation in the amount of DEM 4,392,831 (USD 2,812,312).

83. In the "E" claim form, Westinghouse sought compensation for contract losses. The Panel has reclassified elements of the claim for the purposes of this report. The Panel has therefore considered the amount of USD 2,812,312 for financial losses and interest, as follows:

Table 5. Westinghouse's claim

Claim element	Claim amount (USD)
Financial losses	2,248,872
Interest	563,440
Total	2,812,312

A. Financial losses

1. Facts and contentions

84. Westinghouse seeks compensation in the amount of DEM 3,512,738 (USD 2,248,872) for financial losses. Westinghouse's claim arises in connection with the financing of the Haifa Street Development, Part 7, Project No. 818/173 (the "Project") in Iraq.

85. On 16 June 1982, the main contractor, Wolff & Müller GmbH & Co KG ("Wolff & Müller"), awarded Westinghouse a sub-contract relating to all of the electrical works on the Project. Amanat Al Assima, the local city government authority of Baghdad ("Amanat"), was the employer for the main contract. The total value of the sub-contract including variation orders was IQD 2,528,263.

86. In August 1982, Westinghouse commenced work on the Project. In January 1983, Project works were suspended because of "lack of cash by Iraqi Government". On 29 November 1983, the suspension ended and the Project works recommenced on 29 January 1984. Amanat issued the certificate of completion with effect from 28 June 1985. The final maintenance certificate was issued on 15 December 1988.

87. Prior to the recommencement of the Project works, the terms of payment under the contract were altered from cash payment to a financing loan to be provided by Ausfuhrkreditgesellschaft mbH ("AKA"), the German export finance corporation. AKA and Amanat entered into a loan agreement on 27 October 1983.

88. Under the new arrangement, AKA financed 90 per cent of the contractual amount payable in Deutsche Mark. AKA obtained a full guarantee from the Rafidain Bank in Iraq. AKA also obtained insurance coverage from Hermes Kreditversicherungs-AG ("Hermes"), the German export credit agency. The export credit insurance provided by Hermes covered 75 per cent of the risk. Risk on the remaining 25 per cent was borne by AKA as a self-insured risk. However, AKA's risk was borne by Wolff & Müller by means of an exporter's guarantee signed in favour of AKA. Wolff & Müller in turn, obtained guarantees from Westinghouse "pro rata its share in the entire job", which were issued by Deutsche Bank.

89. Amanat continually failed to meet its obligations under the loan agreement and, in 1989, the Governments of Germany and Iraq agreed that repayments would be made through oil shipments. Following Iraq's invasion and occupation of Kuwait, oil shipments, and consequently the loan repayments, stopped. Westinghouse asserted that the Rafidain Bank breached its obligation to guarantee Amanat's repayment of the loans to AKA.

90. AKA claimed under its insurance with Hermes, and enforced the exporter's guarantee given by Wolff & Müller. Wolff & Müller in turn sought DEM 3,391,088 from Westinghouse, representing its pro rata liability.

91. On 24 June 1992, Westinghouse and Wolff & Müller entered into a settlement agreement pursuant to which they agreed to waive and settle all outstanding claims. In the settlement agreement, the parties agreed that Wolff & Müller held the rights to bring the claims in relation to the Project. The parties also agreed that Wolff & Müller was required to "make all reasonable efforts to assert the rights and [shall] pass on to [Westinghouse] 25.322 per cent of all payments and or other financial benefits which it receives in future."

92. The claim for financial losses includes the amounts of DEM 3,391,088 paid under the guarantees, and DEM 121,650 paid to Deutsche Bank for fees in relation to the guarantees.

2. Analysis and valuation

93. As evidence of its claim for financial losses, Westinghouse provided a copy of the sub-contract with Wolff & Müller, and a subsequent addendum to the sub-contract, dated 18 November 1983, detailing the financial restructuring of the sub-contract. Westinghouse also provided a copy of the certificate of completion, the final maintenance certificate, the settlement agreement, the loan agreement entered into between AKA and Amanat, and the bank guarantees.

94. The Panel finds that the terms of the settlement agreement dated 24 June 1992 clearly demonstrate that Westinghouse relinquished its rights to assert any claims arising out of the Project in favour of Wolff & Müller. Wolff & Müller has filed a claim with the Commission for the same

losses. The Panel's findings with respect to the claim by Wolff & Müller are reported at paragraphs 98 to 122, *infra*. The Panel finds that, under the terms of the settlement agreement dated 24 June 1992, as between Westinghouse and Wolff & Müller, Wolff & Müller is the appropriate claimant before the Commission and Westinghouse has no entitlement to claim for financial losses.

3. Recommendation

95. The Panel recommends no compensation for financial losses.

B. Interest

96. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Westinghouse

Table 6. Recommended compensation for Westinghouse

Claim element	Claim amount (USD)	Recommended compensation (USD)
Financial losses	2,248,872	nil
Interest	563,440	nil
Total	2,812,312	nil

97. Based on its findings regarding Westinghouse's claim, the Panel recommends no compensation.

VI. WOLFF & MÜLLER GMBH & CO KG

98. Wolff & Müller GmbH & Co KG ("Wolff & Müller") is an incorporated limited partnership organised according to the laws of Germany. Wolff & Müller seeks compensation in the amount of DEM 1,979,975 (USD 1,267,589) for contract losses, payment or relief to others and interest. Wolff & Müller also seeks compensation in the amount of DEM 33,672,303 (USD 21,557,172) for what it describes in the Statement of Claim as a "Subsidiary Motion". This amount includes a claim for interest.

99. Wolff & Müller stated that it received partial compensation in the amount of DEM 885,077 for its contract losses from Hermes - Kreditversicherungs AG ("Hermes"), the German export credit agency. Wolff & Müller has not taken this payment into account in the calculation of the total amount of its claim before the Commission.

Table 7. Wolff & Müller's claim

Claim element	Claim amount (USD)
Contract losses	966,814
"Subsidiary Motion"	21,557,172
Payment or relief to others	19,206
Interest	281,569
Total	22,824,761

A. Contract losses and "Subsidiary Motion"

1. Facts and contentions

(a) Contract losses

100. Wolff & Müller seeks compensation in the amount of DEM 1,510,164 (USD 966,814) for contract losses. The losses were allegedly incurred in connection with a contract it entered into on 5 August 1981 with Amanat Al Assima, the local city government authority of Baghdad ("Amanat"), for the Haifa Street Development, Part 7, Project No. 818/173 in Iraq. The contract price was IQD 25,678,080.

101. The certificate of completion was issued on 8 September 1985 with effect from 28 June 1985. The final maintenance certificate was issued on 15 December 1988. On 20 August 1989, Wolff & Müller sent its final account to Amanat.

102. The contract provided for the release of the final portion of the retention monies, representing 1 per cent of the contract price, after the expiry of the 24-month maintenance period and upon the issue of the final

maintenance certificate. Release of this portion was also subject to the conditions that Wolff & Müller (a) provided a bank guarantee for the remaining guarantee period for motors and equipment (60 months from the certificate of completion), and (b) obtained the required clearance certificates from the Iraqi authorities.

103. The 60-month guarantee period was to expire in June 1990. Wolff & Müller asserted that, by then, it had received most of the required clearance certificates, except for the clearance certificates from the central bank and the customs department of Iraq. In the Statement of Claim, Wolff & Müller alleged that in normal circumstances, it would have received the remaining clearance certificates by September 1990, but that it was unable to do so because of Iraq's invasion and occupation of Kuwait. Wolff & Müller seeks to recover the final portion of the retention monies in the amount of DEM 1,510,164.

(b) "Subsidiary Motion"

104. Wolff & Müller seeks compensation for a "Subsidiary Motion", which it describes as a contingent claim for compensation for the amount paid by Wolff & Müller to Ausfuhrkreditgesellschaft mbH ("AKA"), the German export finance corporation. AKA has filed a claim with the Commission even though it has been compensated by Wolff & Müller as well as Hermes.

105. Wolff & Müller is aware that AKA has filed a claim with the Commission for the same losses. Wolff & Müller stated that it seeks compensation in the amount of DEM 33,672,303 (USD 21,557,172) by way of a "Subsidiary Motion" as a protective measure to ensure that its claim is before the Commission if AKA's claim is rejected.

2. Analysis and valuation

(a) Contract losses

106. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

107. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Wolff & Müller had a contract with Iraq.

108. As evidence of its contract losses, Wolff & Müller provided extracts from the contract with Amanat along with the general terms and conditions. It also provided copies of the certificate of completion, the final maintenance certificate, the final account, and correspondence from Hermes dated 2 June 1992 showing the payment of compensation in the amount of DEM 885,077.

109. Pursuant to the terms of the contract, the final portion of the retention monies was to be released upon the issue of the final maintenance certificate, provided the conditions referred to in paragraph 102, supra, were fulfilled.

110. In the article 34 notification, Wolff & Müller was requested to explain whether it provided the bank guarantee for the motors and equipment and, if so, to provide evidence in support. In its reply, Wolff & Müller stated that "we did not provide a guarantee for motor and equipment on top of the outstanding money. This was planned in exchange for that money." As Wolff & Müller did not provide the bank guarantee for the motors and equipment, the Panel notes that the unpaid retention monies should have been released when the final maintenance certificate was issued on 15 December 1988 and after Wolff & Müller had obtained the necessary clearance certificates.

111. In the article 34 notification, Wolff & Müller was also requested to explain why the required clearance certificates could not be obtained prior to Iraq's invasion and occupation of Kuwait. In its reply, Wolff & Müller stated "the issue of [these] release letters took us a very long time (87-90). [These] last 3 release letters we expected to get until end of August 1990."

112. Wolff & Müller commenced the process of obtaining the necessary clearance certificates in 1987. Wolff & Müller provided copies of a number of clearance certificates, which it received in 1988 and 1989. The Panel notes that Wolff & Müller did not receive any clearance certificates in 1990. It did not submit any evidence that would support its assertion that in normal circumstances it would have received the remaining clearance certificates by the end of August 1990. The Panel finds that the failure to obtain the required clearance certificates was caused by administrative and other delays on the part of the authorities in Iraq, and not by Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no compensation for contract losses.

(b) "Subsidiary Motion"

113. The Panel has found in its previous reports that it does not have jurisdiction over contingent claims. The Panel therefore recommends no compensation for the "Subsidiary Motion".

3. Recommendation

114. The Panel recommends no compensation for contract losses and the "Subsidiary Motion".

B. Payment or relief to others

1. Facts and contentions

115. Wolff & Müller seeks compensation in the amount of DEM 30,000 (USD 19,206) for payment or relief to others. The claim is for salary payments allegedly paid to one of Wolff & Müller's employees during his period of detention in Iraq.

116. Wolff & Müller stated that the employee travelled to Iraq in 1988 in order to obtain the necessary clearance certificates for the release of the final portion of the retention monies. The employee was due to depart Iraq on 25 August 1990. However, he did not do so, and after Iraq's invasion and occupation of Kuwait was not permitted to leave Iraq until 9 November 1990. Wolff & Müller seeks to recover salary paid to the employee for a period of two months while he was detained in Iraq.

2. Analysis and valuation

117. As evidence of its claim for payment or relief to others, Wolff & Müller provided copies of two affidavits from the employee, both dated 22 February 1994. In the affidavits, the employee stated that he was not permitted to leave Iraq until 9 November 1990 and that he continued to receive his salary during his period of detention. The affidavits do not state the amount of salary paid.

118. In its reply to the article 34 notification, Wolff & Müller provided copies of relevant pages from the employee's passport and an untranslated schedule of the salary costs.

119. The evidence provided by Wolff & Müller indicates that the employee departed Iraq on 9 November 1990. However, the Panel finds that Wolff & Müller failed to provide sufficient evidence to substantiate the amount of salary paid to the employee, and, therefore, how it suffered any loss.

3. Recommendation

120. The Panel recommends no compensation for payment or relief to others.

C. Interest

121. As the Panel recommends no compensation for contract losses and the "Subsidiary Motion", there is no need for the Panel to determine the date of loss from which interest would accrue.

D. Recommendation for Wolff & Müller

Table 8. Recommended compensation for Wolff & Müller

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	966,814	nil
"Subsidiary Motion"	21,557,172	nil
Payment or relief to others	19,206	nil
Interest	281,569	nil
Total	22,824,761	nil

122. Based on its findings regarding Wolff & Müller's claim, the Panel recommends no compensation.

VII. ANSAL PROPERTIES AND INDUSTRIES LTD.

123. Ansal Properties and Industries Ltd. ("Ansal") is a corporation organised according to the laws of India operating in the construction industry.

124. In the "E" claim form, Ansal sought compensation in the amount of USD 27,926,187 for contract losses, losses related to business transaction or course of dealing, loss of real property, loss of income producing property and payment or relief to others.

125. Ansal stated that it received partial compensation in the amount of USD 5,913,126 for its contract losses from the Government of India. Ansal has not taken the payment into account in the calculation of the total amount of its claim before the Commission.

126. The Panel reclassified some elements of Ansal's losses for the purposes of this report. The Panel therefore considered the amount of USD 27,926,187 for contract losses, loss of profits, loss of tangible property, interest and claim preparation costs, as follows:

Table 9. Ansal's claim

Claim element	Claim amount (USD)
Contract losses	14,603,597
Loss of profits	5,000,000
Loss of tangible property	1,089,524
Interest	7,133,066
Claim preparation costs	100,000
Total	27,926,187

A. Contract losses

1. Facts and contentions

127. Ansal seeks compensation in the amount of USD 14,603,597 for contract losses. The losses were allegedly incurred in connection with a contract it entered into on 3 January 1981 with Amanat Al Assima, the local city government authority of Baghdad ("Amanat"), for the construction of office buildings at Sadoon Street and Tahrir Square in Baghdad (the "Project"). The contract price was IQD 7,896,331. Payment was to be made in Iraqi dinars.

128. Under the contract with Amanat, the Project works were to be completed by 31 January 1983. Ansal stated that the building at Tahrir Square was not in fact completed until 30 November 1984 and the building at Sadoon

Street not until 1 August 1984. However, an acceptance letter issued by Amanat's construction department indicates that one of the buildings was not finally accepted until 21 January 1987.

129. Ansal asserted that the completion of the Project works was delayed due to the war between Iran and Iraq and that it had to incur extra expenses to complete the Project works. Ansal filed claims with Amanat in 1984 to recover the extra expenses, which it had incurred to complete the Project works. Amanat counter-claimed, seeking payment by Ansal of penalty charges because of the delay in the completion of the Project works. The dispute between Ansal and Amanat continued for several years. In June 1990, the parties agreed to resolve their dispute and in August 1990, Amanat confirmed that it would pay to Ansal the amount of USD 7,959,230.

130. With regard to payments under the contract, there was a delay in making foreign currency payments under the contract from August 1983 onwards. After discussions between the Governments of Iraq and India, a deferred payment arrangement (the "deferred payment arrangement") was agreed on 3 August 1983. As timely payments were not made under the deferred payment arrangement, the terms of the arrangement were renegotiated several times. The last negotiation was agreed and signed in July 1990. Pursuant to that agreement, Ansal was to receive payment in the form of oil. Ansal asserted that it has been unable to receive oil because of the trade embargo imposed against Iraq after Iraq's invasion and occupation of Kuwait.

131. Ansal seeks compensation for four kinds of contract losses. First, it seeks compensation in the amount of USD 4,365,268 for outstanding invoices. Ansal asserted that the amounts due under outstanding invoices were eventually covered by the deferred payment arrangement.

132. Second, it seeks compensation in the amount of USD 2,146,812 for "certified amounts due against bills". Ansal stated that this amount remained unpaid because it was required to obtain the necessary clearances from the authorities in Iraq.

133. Third, it seeks compensation in the amount of USD 7,959,230 for additional expenses incurred in completing the Project works. This represents the amount due under the settlement agreement entered into in June 1990.

134. Finally, it seeks compensation in the amount of USD 132,287 for materials which it had sold and delivered in 1989 relating to the Project. In a letter dated 24 June 1989, Amanat requested its Administration and Financial Affairs Department to pay Ansal for the materials, which had been received by the "Department of Construction, and the Department of Machinery and Production".

2. Analysis and valuation

135. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

136. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Ansal had a contract with Iraq.

137. As evidence of its contract losses, Ansal provided copies of correspondence exchanged with the authorities in Iraq, and extracts from the deferred payment arrangement. Ansal did not provide a complete signed copy of the contract.

138. The Panel finds that all work under the contract, including the delivery of materials, was completed prior to 2 May 1990.

139. The Panel recommends no compensation for contract losses in respect of work performed/materials delivered prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

140. The Panel finds that the deferred payment arrangement - in so far as it related to the contract losses - does not constitute a new agreement for the purposes of the Commission's jurisdiction, but is an arrangement for deferred payment of the existing obligations of Iraq arising well before 2 August 1990.

3. Recommendation

141. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

142. Ansal seeks compensation in the amount of USD 5,000,000 for loss of profits expected to be earned from January 1985 to February 1993. Ansal asserted that it was not allowed to re-export its equipment out of Iraq since 1984 and after it departed from Iraq in July 1990, its equipment was confiscated by the "Government of Iraq, believably FAW Establishment and others". Ansal further asserted that if it had been permitted to re-export its equipment out of Iraq, it could have used the equipment on other projects and earned a profit.

2. Analysis and valuation

143. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 17 and 18, supra.

144. Ansal stated that the Project works were completed in 1984. The Panel therefore finds that the failure to obtain the permission of the Iraqi authorities to re-export the equipment from Iraq was not the direct result of Iraq's invasion and occupation of Kuwait. Ansal also failed to provide evidence of an existing contractual relationship at the time of Iraq's invasion and occupation of Kuwait. In its reply to the article 34 notification, Ansal stated that "no contract was secured by Ansal in Iraq or outside Iraq due to the policy of the Iraqi Government in not allowing re-export of the assets". The Panel therefore finds that Ansal's claim for loss of profits is speculative and unsupported. The Panel further finds that Ansal failed to demonstrate that the alleged loss was suffered due to Iraq's invasion and occupation of Kuwait.

3. Recommendation

145. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

146. Ansal seeks compensation in the amount of USD 1,089,524 for loss of tangible property. It asserted that because it was not allowed to re-export its equipment from Iraq after 1984, it had stored the equipment at the "Sayeed Hamdalla" from where the equipment was confiscated by "FAW Establishment" of Iraq.

147. In the article 34 notification, Ansal was requested to confirm whether the equipment was confiscated prior to Iraq's invasion and occupation of Kuwait. In its reply, Ansal stated that as its employees departed from Iraq in July 1990, it could not state the exact date when the equipment was confiscated.

2. Analysis and valuation

148. As evidence of its claim for tangible property losses, Ansal provided copies of letters addressed to the authorities in Iraq, a list comprising five typed pages containing the description of the assets, the quantity, the value and the declaration numbers. The last page of this list had the following handwritten remark "copy of documents given to AAA on 4.7.90".

149. The Panel notes that a document entitled "Appendix II Pictographic presentation of Events" indicates that Ansal's equipment and assets were confiscated on 4 July 1990. The Panel also notes that, in the Statement of Claim, Ansal stated that "in July 1990 [Ansal] submitted the consolidated list of equipment's including valuation thereof, illegally, unlawfully withheld and taken over by Iraqi Authorities". The Panel therefore finds that the alleged loss was suffered prior to 2 August 1990.

150. Ansal was requested to provide invoices in relation to the property. In its reply, Ansal asserted that it gave the invoices and other relevant documents to the authorities in Iraq. Ansal did not provide evidence in support of its assertion.

151. The Panel finds that Ansal failed to demonstrate that the alleged loss was a direct loss arising from Iraq's invasion and occupation of Kuwait.

3. Recommendation

152. The Panel recommends no compensation for loss of tangible property.

D. Interest

153. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

E. Claim preparation costs

154. Ansal seeks compensation in the amount of USD 100,000 for asserted claim preparation costs. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by Ansal for such costs.

F. Recommendation for Ansal

Table 10. Recommended compensation for Ansal

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	14,603,597	nil
Loss of profits	5,000,000	nil
Loss of tangible property	1,089,524	nil
Interest	7,133,066	nil
Claim preparation costs	100,000	(--)
Total	27,926,187	nil

155. Based on its findings regarding Ansal's claim, the Panel recommends no compensation.

VIII. M/S. BHANDARI BUILDERS (PRIVATE) LIMITED

156. M/s. Bhandari Builders (Private) Limited ("Bhandari") is a corporation organised according to the laws of India operating in the construction industry. The Panel notes that, on 1 July 1996, Bhandari's name was changed to Bhandari Builders Limited.

157. In the "E" claim form, Bhandari sought compensation in the amount of USD 16,800,000 for income producing property. This loss has been reclassified for the purpose of this report as loss of profits.

158. In its reply to the article 34 notification, Bhandari included an additional claim for financial losses relating to the sale of bonds at a discounted value. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Bhandari.

159. The Panel therefore considered the amount of USD 24,041,647 for contract losses, loss of profits and interest.

160. Bhandari stated that it received partial compensation in the amounts of USD 7,124,840 and USD 505,092 for its contract losses from both the Government of India and the Export Credit Guarantee Corporation of India, respectively. These amounts relate to losses suffered by Bhandari both for this claim and another claim. The findings of the Panel with respect to Bhandari's other claim are reported infra, at paragraphs 182 to 216 of this report. Bhandari has not stated how the amounts received as compensation should be allocated between the two claims. Bhandari has not taken the payments into account in the calculation of the total amount of its claims before the Commission.

Table 11. Bhandari's claim

Claim element	Claim amount (USD)
Contract losses	4,403,308
Loss of profits	16,800,000
Interest	2,838,339
Total	24,041,647

A. Contract losses

1. Facts and contentions

161. Bhandari seeks compensation in the amount of USD 4,403,308 for contract losses. The losses were allegedly incurred in connection with a contract it entered into on 19 April 1980 with the Life Insurance Company,

Ministry of Finance of Iraq (the "Ministry") for the construction of an office building.

162. The contract price was IQD 2,114,702. Bhandari stated that the project works were due to be completed by 1 November 1982, however, "due to acts of omission and commission on the part of the [Ministry]", they were not completed until 6 May 1986. A copy of the completion certificate, dated 26 July 1986, indicates that the project works were completed on 6 May 1986.

163. Bhandari seeks compensation for three types of contract losses.

164. First, Bhandari seeks compensation for unpaid retention monies in the amount of USD 119,717. The contract provided for a 12-month maintenance period from the date of the issue of the completion certificate. Retention monies were to be released upon the issue of the maintenance certificate. A letter dated 6 October 1990 from the Ministry indicates that the retention monies were to be paid to Bhandari after it had obtained the required clearances.

165. Second, Bhandari seeks compensation for "payment of war claims" in the amount of USD 2,821,287. Bhandari stated that the war between Iraq and Iran considerably delayed the completion of the project works. Bhandari asserted that, as a result of that war, it had to incur extra expenses to complete the project works. It described those expenses as "payment of war claims". Bhandari further asserted that it informed the Ministry "for claim of compensation for continuing the work under adverse conditions". Bhandari alleged that the Ministry acknowledged the claims and agreed "with the estimate of damages". However, Bhandari did not provide evidence in support of its assertions.

166. Third, Bhandari seeks compensation for payments alleged to be outstanding under a deferred payment arrangement in the amount of USD 1,462,304. From 1983 onwards, the Ministry was unable to make timely payments relating to the foreign currency payments under the contract. After discussions between the Governments of Iraq and India, a deferred payment arrangement was agreed on 3 August 1983. As the Ministry failed to make timely payments under the deferred payment arrangement, the terms of the arrangement were renegotiated several times. The last of such arrangements was signed on 14 March 1990. Bhandari asserted that since February 1990, it has not received any payments and it attributes the fact of non-payment to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

167. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

168. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Bhandari had a contract with Iraq.

169. As evidence of its claim for contract losses, Bhandari provided a copy of the contract along with the general and specific conditions, the completion certificate dated 26 July 1986 and a letter dated 6 October 1990 confirming the amount of the outstanding retention monies. It also provided correspondence from the Export Credit Guarantee Corporation of India.

170. In this case, the project works were completed on 6 May 1986. The contract provided for the release of the retention monies after the 12 month maintenance period. The maintenance period was to commence from the date of the issue of the completion certificate. The completion certificate was issued on 26 July 1986. The Panel notes that the maintenance period should have expired in July 1987 and the retention monies should have been released at that time.

171. The Panel finds that the retention monies became due to Bhandari in 1987, and therefore constitute a debt and obligation of Iraq arising prior to 2 August 1990.

172. With respect to the "payment of war claims" and the amounts outstanding under the deferred payment arrangement, the Panel finds that all work under the contract was completed prior to 2 May 1990.

173. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

174. The Panel finds that the deferred payment arrangement - in so far as it related to the contract losses - does not constitute a new agreement for the purposes of the Commission's jurisdiction, but is an arrangement for deferred payment of the existing obligations of Iraq arising prior to 2 August 1990.

3. Recommendation

175. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

176. Bhandari seeks compensation in the amount of USD 16,800,000 for loss of profits for a period of three years, but it did not specify which years. It asserted that had it received the amounts owed to it by the Ministry, it could have "managed" a project of approximately USD 70,000,000 each year, and would have achieved a turnover of 80 per cent, which amounts to

USD 56,000,000. Bhandari stated that it would have made a profit of 10 per cent per annum, which amounts to USD 5,600,000 per year.

2. Analysis and valuation

177. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 17 and 18, supra.

178. Bhandari did not provide any evidence to substantiate its loss of profits claim or that it had an existing contractual relationship at the time of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that Bhandari's claim for loss of profits is unsupported and speculative. In any event, the Panel notes that the claim for loss of profits is based on the assertion of non-payment of amounts allegedly owed to Bhandari, which the Panel has found to be outside the jurisdiction of the Commission. As such, the claim must fail.

3. Recommendation

179. The Panel recommends no compensation for loss of profits.

C. Interest

180. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

D. Recommendation for Bhandari

Table 12. Recommended compensation for Bhandari

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	4,403,308	nil
Loss of profits	16,800,000	nil
Interest	2,838,339	nil
Total	24,041,647	nil

181. Based on its findings regarding Bhandari's claim, the Panel recommends no compensation.

IX. M/S. BHANDARI BUILDERS (PRIVATE) LIMITED

182. M/s. Bhandari Builders (Private) Limited ("Bhandari") is a corporation organised according to the laws of India operating in the construction industry. The Panel notes that, on 1 July 1996, Bhandari's name was changed to Bhandari Builders Limited.

183. In the "E" claim form, Bhandari sought compensation in the amount of USD 48,000,000 for income producing property. This loss has been reclassified for the purpose of this report as loss of profits.

184. In its reply to the article 34 notification, Bhandari confirmed that its claim for "loss of camp" in the amount of USD 1,847,056 is a claim for loss of real property, which was originally included in its claim for loss of tangible property in the amount of USD 7,007,373. Accordingly, the Panel has considered the amounts of USD 1,847,056 for loss of real property and USD 5,160,317 for loss of tangible property.

185. In its reply to the article 34 notification, Bhandari included an additional claim for financial losses relating to the sale of bonds at a discounted value. For the reasons stated in paragraph 9, _supra_, the Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Bhandari.

186. The Panel therefore considered the amount of USD 105,251,227 for contract losses, loss of profits, loss of real property, loss of tangible property and interest, as follows:

Table 13. Bhandari's claim

Claim element	Claim amount (USD)
Contract losses	30,637,890
Loss of profits	48,000,000
Loss of real property	1,847,056
Loss of tangible property	5,160,317
Interest	19,605,964
Total	105,251,227

A. Contract losses

1. Facts and contentions

187. Bhandari seeks compensation in the amount of USD 30,637,890 for contract losses. The losses were allegedly incurred in connection with a contract it entered into on 12 July 1980 with the State Organisation of Housing, Ministry of Housing and Construction of Iraq (the "Ministry") for

the construction of 800 houses and public buildings in the Najaf Governorate in Iraq (the "Project").

188. The contract price was IQD 14,308,405. Bhandari asserted that the Project works were to be completed in 28 months, however, due to the delays caused by the war between Iran and Iraq, the works were not completed until 30 December 1985. The contract provided for a 12-month maintenance period from the date of the issue of the preliminary completion certificate. The preliminary completion certificate was issued on 30 December 1985 and the final completion certificate on 18 January 1988.

189. Bhandari seeks compensation for four types of contract losses, as set out in the following table:

Table 14. Bhandari's claim for contract losses

Loss element	Claim amount (USD)
Unpaid retention monies	1,071,451
Outstanding bills	275,559
"Payment of war claims"	21,638,052
Outstanding deferred payments	7,652,828
Total	30,637,890

(a) Unpaid retention monies

190. Bhandari seeks compensation for unpaid retention monies in the amount of USD 1,071,451. In its reply to the article 34 notification, Bhandari indicated that the retention monies were to be released after it had obtained the required clearance certificates. Bhandari stated that the clearance certificates were obtained in 1997. Bhandari also provided a letter dated 16 September 1993 addressed to the Ministry of Foreign Affairs of Iraq. In this letter, Bhandari indicated that the amount of retention monies has been outstanding and payable since 1987, but that, "payment has not been made on one pretext or the other".

(b) Outstanding bills

191. Bhandari asserted that the Ministry failed to pay the amounts due under the "final and the pre-final bills" in the amount of USD 275,559. In its reply to the article 34 notification, Bhandari provided a letter dated 16 September 1993 addressed to the Ministry of Foreign Affairs of Iraq. In this letter, Bhandari indicated that the amounts outstanding under the bills have been payable since 1987, but that, "payment has not been made on one pretext or the other". Bhandari seeks compensation in the amount of USD 275,559 with respect to the outstanding bills.

(c) "Payment of war claims"

192. Bhandari stated that the war between Iraq and Iran considerably delayed the completion of the Project works. Bhandari asserted that, as a result of that war, it had to incur extra expenses to complete the Project works. It described those expenses as "payment of war claims". Bhandari further asserted that it informed the Ministry "for claim of compensation for continuing the work under adverse conditions". Bhandari alleged that the Ministry acknowledged the claims and agreed "with the estimate of damages". However, Bhandari did not provide evidence in support of its assertions. Bhandari seeks compensation for "payment of war claims" in the amount of USD 21,638,052.

(d) Outstanding deferred payments

193. From 1983 onwards, the Ministry was unable to make timely payments relating to the foreign currency payments under the contract. After discussions between the Governments of Iraq and India, a deferred payment arrangement was agreed on 3 August 1983. As the Ministry failed to make timely payments under the deferred payment arrangement, the terms of the arrangement were renegotiated several times. The last of such arrangements was signed on 14 March 1990. Bhandari asserted that since February 1990, it has not received any payments and it attributes the fact of non-payment to Iraq's invasion and occupation of Kuwait. Bhandari seeks compensation for payments alleged to be outstanding under the deferred payment arrangement in the amount of USD 7,652,828.

2. Analysis and valuation

194. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

195. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Bhandari had a contract with Iraq.

196. As evidence of its contract losses, Bhandari provided a copy of the contract, the preliminary completion certificate, the final completion certificate and the final bill. It also provided copies of correspondence with the Ministry and the Export Credit Guarantee Corporation of India, and the minutes of the meetings that took place at which the deferred payment arrangement was agreed.

(a) Unpaid retention monies

197. With respect to the claim for retention monies, Bhandari stated that the retention monies became due and payable in 1987. It further stated that the retention monies were to be released after it had obtained the

required clearance certificates. Given that the retention monies became due and payable in 1987, the Panel finds that it is extremely unlikely that the failure to obtain the required clearance certificates was due to Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no compensation for retention monies.

(b) Outstanding bills;

(c) "Payment of war claims"; and

(d) Outstanding deferred payments

198. With respect to the claims for outstanding bills, "payment of war claims" and the amounts outstanding under the deferred payment arrangement, the Panel finds that all work under the contract was completed prior to 2 May 1990. Accordingly, the claim relates entirely to work that was completed prior to 2 May 1990 and is not within the jurisdiction of the Commission.

199. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

200. The Panel finds that the deferred payment arrangement - in so far as it related to the contract losses - does not constitute a new agreement for the purposes of the Commission's jurisdiction, but is an arrangement for deferred payment of the existing obligations of Iraq arising prior to 2 August 1990.

3. Recommendation

201. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

202. Bhandari seeks compensation in the amount of USD 48,000,000 for loss of profits for a period of three years, but it did not specify which years. It asserted that had it received the amounts owed to it by the Ministry, it could have "managed" a project of approximately USD 200,000,000 each year, and would have achieved a turnover of 80 per cent, which amounts to USD 160,000,000. Bhandari stated that it would have made a profit of 10 per cent per annum, which amounts to USD 16,000,000 per year.

2. Analysis and valuation

203. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 17 and 18, supra.

204. Bhandari did not provide any evidence of an existing contractual relationship at the time of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that Bhandari's claim for loss of profits is speculative. In any event, the Panel notes that the claim for loss of profits is based on the assertion of non-payment of amounts allegedly owed to Bhandari, which the Panel has found to be outside the jurisdiction of the Commission. As such, the claim must fail.

3. Recommendation

205. The Panel recommends no compensation for loss of profits.

C. Loss of real property

1. Facts and contentions

206. Bhandari seeks compensation in the amounts of USD 1,847,056 for loss of real property. The claim relates to the loss of its camp at the project site in Iraq. Documents submitted by Bhandari indicate that there were many trailer units located at the camp. Accommodation buildings, factories and offices were constructed on site. Bhandari depreciated the value of the camp by 30 per cent to provide a residual value and increased the depreciated value by 5 per cent per annum for inflation, resulting in the claimed amount of USD 1,847,056.

207. Bhandari asserted that its campsite was "fully protected by boundary and looked after by [Bhandari's] staff". Hence, the project site was not abandoned. Bhandari stated that on 4 March 1991, "rebels" (who were allegedly acting against the Government of Iraq) forced themselves on to the camp site, looted and burnt all of its property and records. Bhandari further asserted that the looting and destruction of its camp site by the "rebels" on 4 March 1991 was due to the complete breakdown of civil law and order in Iraq, which was caused by the withdrawal of Iraqi forces from Kuwait.

2. Analysis and valuation

208. With respect to the issue of causation, Governing Council decision 7 provides that compensation is available with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of, inter alia, "the breakdown of civil order in Kuwait or Iraq during that period" (i.e. 2 August 1990 to 2 March 1991).

209. The Panel notes that Bhandari's staff was present at the camp site on 4 March 1991. The Panel further notes that the actions resulting in the loss of the camp allegedly took place as a result of the breakdown of civil order in Iraq, which Bhandari stated was caused by the withdrawal of Iraqi forces from Kuwait. These actions took place outside the compensable period as determined by the Governing Council. The Panel has been unable

to conclude, on the evidence provided by Bhandari, that the loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

210. The Panel recommends no compensation for real property losses.

D. Loss of tangible property

1. Facts and contention

211. Bhandari seeks compensation in the amount of USD 5,160,317 for loss of tangible property. The claim includes the amounts of USD 635,716 for loss of spare parts, USD 1,039,584 for loss of construction materials and USD 3,485,017 for loss of equipment.

212. Bhandari asserted that after the expiry of the maintenance period in December 1986, it applied for permission from the Iraqi authorities to re-export its machinery, equipment and materials out of Iraq. The permission to re-export was not granted, and Bhandari asserted that all its property was stolen, destroyed and looted by the "rebels" on 4 March 1991.

2. Analysis and valuation

213. For the reasons referred to in paragraphs 208 and 209, supra, the Panel finds that Bhandari failed to establish that the loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

214. The Panel recommends no compensation for loss of tangible property.

E. Interest

215. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

F. Recommendation for Bhandari

Table 15. Recommended compensation for Bhandari

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	30,637,890	nil
Loss of profits	48,000,000	nil
Loss of real property	1,847,056	nil
Loss of tangible property	5,160,317	nil
Interest	19,605,964	nil
Total	105,251,227	nil

216. Based on its findings regarding Bhandari's claim, the Panel recommends no compensation.

X. BYUCKSAN DEVELOPMENT CO., LTD.

217. Byucksan Development Co., Ltd. ("Byucksan") is a corporation organised according to the laws of the Republic of Korea. At the time of Iraq's invasion and occupation of Kuwait, Byucksan operated in the construction industry. Byucksan seeks compensation in the amount of USD 36,626,418 for contract losses.

Table 16. Byucksan's claim

Claim element	Claim amount (USD)
Contract losses	36,626,418
Total	36,626,418

A. Contract losses

1. Facts and contentions

218. Byucksan seeks compensation in the amount of USD 36,626,418 for contract losses arising out of a contract awarded to a consortium described as the "KOCC - Namkwang - Hyundai" consortium (the "consortium"). KOCC sub-contracted its portion of the project works to Byucksan. On 18 July 1982, the consortium was awarded a contract by the New Railways Implementation Authority of Iraq for the execution of the Kirkuk-Baiji-Haditha Railway Authority project in Iraq. Byucksan stated that the project works were completed on 30 September 1987.

219. Byucksan seeks compensation for four types of contract losses. First, it seeks compensation in the amount of USD 25,754,025 relating to unpaid promissory notes issued in respect of works performed on the project. The promissory notes were issued from 1 September 1986 by the Ministry of Housing and Construction of Iraq (the "Ministry"). Payments under the promissory notes fell due after their respective dates of issue. As the Ministry failed to make timely payments, the Ministry and Byucksan entered into a deferred payment agreement on 1 October 1989 for the reissue of promissory notes with new dates of payment between 1992 and 1995.

220. Second, Byucksan seeks compensation in the amount of USD 7,987,798 for the "Balance of 52nd and 54th progress payments and the first half of the retention money".

221. Third, it seeks compensation in the amount of USD 656,819 for the "55th (final) progress payment".

222. Fourth, it seeks compensation in the amount of USD 2,227,776 for the second half of the retention monies.

2. Analysis and valuation

223. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

224. Byucksan provided copies of the promissory notes which make reference to the "Ministry of Housing and Construction, Republic of Iraq". Byucksan entered into the deferred payment agreement on 1 October 1989 with the Ministry. Pursuant to the terms and conditions of this agreement, the Ministry was to make all payments referred to in the agreement directly to Byucksan. As such, Byucksan had a direct payment demand against the Ministry. This indicates that Byucksan had contracted with an Iraqi state agency.

225. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Byucksan had a contract with Iraq.

226. As evidence of its claim for contract losses, Byucksan provided copies of promissory notes due for payment between 1990 and 1995, and a copy of the deferred payment agreement.

227. With respect to the claim for unpaid promissory notes, the Panel finds that the promissory notes were issued for work, which was performed prior to 2 May 1990, and is therefore a debt and obligation of Iraq arising prior to 2 August 1990.

228. With respect to the claims for outstanding progress payments and the unpaid retention monies, Byucksan did not provide any evidence to substantiate its claim. The Panel notes that in response to the article 34 notification, the Permanent Mission of the Republic of Korea informed the Commission that Byucksan had no further information or evidence to present to the Panel. In the absence of any evidence to the contrary, the Panel finds that the work to which the claim for outstanding progress payments and unpaid retention monies relates was performed prior to 2 May 1990. The Panel further finds that Byucksan failed to provide sufficient evidence to demonstrate that the alleged losses were suffered due to Iraq's invasion and occupation of Kuwait.

229. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

230. The Panel finds that for the purposes of the Security Council resolution 687 (1991) the deferred payments agreement did not have the effect of novating the debt.

3. Recommendation

231. The Panel recommends no compensation for contract losses.

B. Recommendation for Byucksan

Table 17. Recommended compensation for Byucksan

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	36,626,418	nil
Total	36,626,418	nil

232. Based on its findings regarding Byucksan's claim, the Panel recommends no compensation.

XI. DAEWOO CORPORATION

233. On 19 April 2000, the Commission received a notice of withdrawal of the claim by Daewoo Corporation from the Permanent Mission of the Republic of Korea. In the light of this communication, the Panel issued a procedural order on 22 May 2000, pursuant to article 42 of the Rules, acknowledging the withdrawal and terminating the Panel's proceedings with respect to the claim by Daewoo Corporation.

XII. NAM KWANG ENGINEERING & CONSTRUCTION CO., LTD.

234. Nam Kwang Engineering & Construction Co., Ltd., ("Nam Kwang") is a corporation organised according to the laws of the Republic of Korea operating in the construction industry. Nam Kwang seeks compensation in the amount of USD 17,450,954 for contract losses and interest.

Table 18. Nam Kwang's claim

Claim element	Claim amount (USD)
Contract losses	13,400,674
Interest	4,050,280
Total	17,450,954

A. Contract losses

1. Facts and contentions

235. Nam Kwang seeks compensation in the amount of USD 13,400,674 for contract losses. Nam Kwang did not provide a Statement of Claim or any information relating to its claim for contract losses. Nam Kwang was one of the members of the consortium described as the "KOCC Consortium", which was executing the "KBH Railway Project" in Iraq. Nam Kwang's claim for contract losses is set out in the following table:

Table 19. Nam Kwang's claim for contract losses

Loss element	Claim amount (USD)
Unpaid promissory notes	11,405,431
"MPP 53rd and retention money released"	54,147
"Retention money released"	167,758
"MPP 54th"	28,092
"MPP 55th and additional works"	134,690
Second half of the retention monies	1,610,556
Total	13,400,674

2. Analysis and valuation

236. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the

Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

237. As evidence of its contract losses, Nam Kwang provided copies of the promissory notes, which were issued by the Ministry of Housing and Construction of Iraq. Nam Kwang also provided copies of correspondence from the Ministry of Transport and Communications of Iraq indicating that it was one of the members of the "KOCC Consortium".

238. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Nam Kwang had a contract with Iraq.

(a) Unpaid promissory notes

239. Nam Kwang provided copies of two promissory notes, which it describes as "old promissory notes". Both of these promissory notes were issued on 16 July 1987 and were due for payment on 20 January 1990 and 20 July 1990, respectively. Nam Kwang also provided copies of 10 other promissory notes, which it describes as "re-scheduled promissory notes". These 10 promissory notes were issued on 5 July 1989 and were due for payment between 1992 and 1994.

240. In the absence of any evidence to the contrary, the Panel finds that the work to which the claim for unpaid promissory notes relates was performed prior to 2 May 1990. The Panel also finds that Nam Kwang failed to demonstrate that the alleged loss was suffered due to Iraq's invasion and occupation of Kuwait.

(b) "MPP 53rd and retention money released"

241. In support of its claim for this loss item, Nam Kwang provided a copy of a letter dated 24 January 1989 from the Ministry of Transport and Communications of Iraq, which indicates that the work to which the claim for "MPP 53rd and retention money released" relates was performed prior to 2 May 1990.

(c) "Retention money released"

242. In support of its claim for this loss item, Nam Kwang provided a copy of a letter dated 10 May 1989 from the Ministry of Transport and Communications of Iraq, which indicates that the Ministry had approved and authorised the Central Bank of Iraq to transfer the retention money in the account of "KOCC Consortium". The Panel therefore finds that the retention monies became due and payable to Nam Kwang on 10 May 1989.

(d) "MPP 54th"

243. In support of its claim for this loss item, Nam Kwang provided a copy of a letter dated 19 December 1989 from the Ministry of Transport and

Communications of Iraq, which indicates that the work to which the claim for "MPP 54th" relates was performed prior to 2 May 1990.

244. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(e) "MPP 55th and additional works"; and

(f) Second half of the retention monies

245. Nam Kwang did not state when it performed the works relating to "MPP 55th and additional works" or when the second half of the retention monies became due and payable. The Panel notes that, in response to the article 34 notification, the Permanent Mission of the Republic of Korea informed the Commission that Nam Kwang had no further information or evidence to present to the Panel.

246. The Panel finds that Nam Kwang failed to provide sufficient evidence to substantiate its claim, and, therefore, how it suffered the alleged losses. The Panel further finds that Nam Kwang failed to provide sufficient evidence to demonstrate that the alleged losses were suffered due to Iraq's invasion and occupation of Kuwait.

3. Recommendation

247. The Panel recommends no compensation for contract losses.

B. Interest

248. As the Panel recommends no compensation for contract losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Recommendation for Nam Kwang

Table 20. Recommended compensation for Nam Kwang

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	13,400,674	nil
Interest	4,050,280	nil
Total	17,450,954	nil

249. Based on its findings regarding Nam Kwang's claim, the Panel recommends no compensation.

XIII. INTERNATIONALE FUNDERINGSGROEP BV

250. Internationale Funderingsgroep bv ("Internationale") is a corporation organised according to the laws of the Netherlands operating in the construction industry. Internationale seeks compensation in the amount of USD 2,166,705 for losses related to business transaction or course of dealing and interest.

251. In its reply to the article 15 notification, Internationale claimed additional interest and increased the claimed amount. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Internationale, as follows:

Table 21. Internationale's claim

Claim element	Claim amount (USD)
Business transaction or course of dealing	1,720,000
Interest	446,705
Total	2,166,705

A. Business transaction or course of dealing

1. Facts and contentions

252. Internationale seeks compensation in the amount of USD 1,720,000 for losses related to business transaction or course of dealing. Between 1970 and 1985, Internationale carried out a number of large and small "deep foundation works" in Iraq. This included work on bridges, power plants, hotels, office buildings and other projects. Internationale asserted that in 1984, the Iraqi customs authorities confiscated its equipment and levied a fine in the amount of IQD 1,336,441 for violating the customs regulations of Iraq.

253. In order to pay this fine, on 18 July 1985, Internationale transferred 12,600,000 Guilders from the Netherlands to the Rafidain Bank in Baghdad. The fine was paid on 24 July 1985.

254. After having paid the fine, Internationale appealed against the decision of the customs authorities to levy the fine and started a protracted legal process, which lasted from 1985 to 1989. In January 1989, the Iraqi Customs Court ordered a partial refund of the fine in the amount of IQD 670,435. On 15 March 1989, Internationale received the amount of IQD 670,435, and deposited the refunded amount into its bank account with the Rafidain Bank the following day.

255. Thereafter, Internationale commenced the procedure to obtain the permission of the Iraqi authorities to transfer the refunded amount to the

Netherlands. After the intervention of the Embassy of the Netherlands in Iraq, on 26 June 1990, the Iraqi authorities approved the transfer of the amount of USD 1,720,000 out of Iraq in four monthly instalments in the amount of USD 430,000 each, commencing in July 1990 and ending in October 1990.

256. On 11 July 1990, the Rafidain Bank requested the Central Bank of Iraq to transfer the first instalment in the amount of USD 430,000.

257. Internationale stated that this transfer and the subsequent transfers never took place as a result of Iraq's invasion and occupation of Kuwait. The amount claimed by Internationale is still on deposit in its bank account with the Rafidain Bank.

2. Analysis and valuation

258. As evidence of its claim for losses related to business transaction or course of dealing, Internationale provided details of the dispute with the customs authorities, a transcript of the appeal to the Customs Court and a chronology of the legal proceeding which took place between 1985 and 1989. The documents submitted also show that funds were transferred from the Netherlands to the Rafidain Bank.

259. Further, Internationale provided the approval of the Ministry of Finance of Iraq relating to the refund of the amount of IQD 670,435, and the approval of the Ministry of Foreign Affairs of Iraq relating to the transfer of the amount of USD 1,720,000 in four equal instalments of USD 430,000. It also provided the Rafidain Bank's request to the Central Bank of Iraq to transfer the first instalment of USD 430,000, and a certificate dated 22 March 2000 from the Rafidain Bank showing a balance of IQD 535,001 in its account at that date.

260. This Panel has found in its previous reports that the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

261. In this case, the authorities in Iraq had granted their permission to transfer the amount of USD 1,720,000. Internationale stated that the first instalment was due to be transferred out of Iraq on 26 July 1990. Having reviewed the evidence submitted, the Panel accepts this assertion. The Panel therefore finds that under normal circumstances, the proposed transfer of the amount of USD 1,720,000 in four equal monthly instalments would have taken place had it not been for Iraq's invasion and occupation of Kuwait.

262. The Panel notes that the Iraqi dinars deposited by Internationale in its bank account with the Rafidain Bank are still available to it. The

Panel finds that, while the funds may still be available in Iraqi dinars, the inability to exchange the funds for convertible currencies and to transfer the converted funds out of Iraq constitutes the loss. This fact is not changed by the fact that the funds might be withdrawn in Iraqi dinars. The Panel therefore recommends compensation in the amount of USD 1,720,000.

3. Recommendation

263. The Panel recommends compensation in the amount of USD 1,720,000 for business transaction or course of dealing.

B. Interest

264. With reference to the issue of interest, the Panel refers to paragraphs 20 and 21, supra, of this report.

C. Recommendation for Internationale

Table 22. Recommended compensation for Internationale

Claim element	Claim amount (USD)	Recommended compensation (USD)
Business transaction or course of dealing	1,720,000	1,720,000
Interest	446,705	(--)
Total	2,166,705	1,720,000

265. Based on its findings regarding Internationale's claim, the Panel recommends compensation in the amount of USD 1,720,000. In relation to Internationale's claim for business transaction losses, the Panel finds the date of loss to be 11 September 1990, which is the mid-point of the four monthly instalments.

XIV. NATIONAL CONSTRUCTION COMPANY (PAKISTAN) LIMITED

266. National Construction Company (Pakistan) Limited ("National") is a corporation organised according to the laws of Pakistan. At the time of Iraq's invasion and occupation of Kuwait, National operated in the construction industry.

267. On 17 August 1990, National went into voluntary liquidation. National's claim has been submitted by the liquidator.

268. In the "E" claim form National sought compensation in the amount of USD 45,801,828 for contract losses, loss of profits, loss of tangible property, payment or relief to others and other losses.

269. The Panel has reclassified elements of National's claim for the purposes of this report. The Panel therefore considered the amount of USD 45,801,828 for contract losses, loss of profits, loss of tangible property, payment or relief to others, financial losses, other losses and interest, as follows:

Table 23. National's claim

Claim element	Claim amount (USD)
Contract losses	29,367,553
Loss of profits	3,323,020
Loss of tangible property	3,729,284
Payment or relief to others	215,469
Financial losses	5,725,668
Other losses	999,387
Interest	2,441,447
Total	45,801,828

A. Contract losses

1. Facts and contentions

270. National seeks compensation in the amount of USD 29,367,553 for contract losses. The losses were allegedly incurred in connection with two contracts awarded on 5 January 1980 by the State Organization of Soil and Land Reclamation of Iraq (the "State Organization") to a joint venture comprising National and Civelecmec (Pakistan) Limited ("Civelecmec").

271. Pursuant to the terms of the joint venture agreement dated 22 December 1981 between National and Civelecmec, National was responsible for the execution of a contract for Project Ishaqi-11 ("Contract 29") and

consequently entitled to all of the profits (or losses) arising from that contract. Civelecmec had similar responsibilities and benefits under the other contract for Project Ishaqi-10 ("Contract 28"). National provided the bank guarantees in respect of both contracts.

272. The contract price for Contract 29 was IQD 6,990,000. The contract price for Contract 28 was IQD 8,082,034.

273. National stated that it completed the project works for Contract 29 on 12 January 1987, with considerable losses and delays. The delays were stated to have been caused by the war between Iran and Iraq. The State Organization consequently withheld certain financial claims of National and also levied delay penalties.

274. The progress of Contract 28 was even more troubled. On 9 February 1982, National informed the State Organization that Civelecmec had neither the means nor the ability to execute the contract and requested the transfer of the project works to National. At this stage, although Civelecmec had received approximately 60 per cent of the contract price, it had only carried out 20 per cent of the project works.

275. On 16 August 1984, the State Organization removed Civelecmec from the management of Contract 28 and confiscated its assets. At this point, there was a substantial time overrun on the contract. The State Organization advised National that unless it agreed to complete the project, it would employ another contractor to complete the project at National's cost, as National was the only joint venture partner remaining in Iraq.

276. On 9 March 1985, National and the State Organization entered into a contract under which National agreed to complete Contract 28 (the "replacement contract"). According to its terms, the replacement contract represented an assignment of Contract 28 to National. The replacement contract was based on the original 1980 prices, which allegedly resulted in a loss of approximately USD 4,000,000 to National. The replacement contract specifically held National liable for amounts due from or paid to Civelecmec.

277. National stated that towards the end of the replacement contract, it learned that Civelecmec had been overpaid an amount of IQD 3,353,557 in respect of fees which could be deducted from the approved payments due to National. National also learned that the customs authorities of Iraq had levied a penalty on Civelecmec in the amount of IQD 971,408, which could also be deducted from the approved payments due to National.

278. National eventually handed over the works carried out under the replacement contract to the State Organization on 24 September 1990, following the expiry of the maintenance period. The final acceptance certificate was issued on 9 October 1990.

279. National seeks compensation for five types of contract losses. The losses relate to various elements in dispute in relation to Contract 29 and the replacement contract.

(a) Losses due to non-payment of principal amounts and retention monies

280. National seeks compensation in the amount of IQD 993,158 (USD 3,186,934) relating to unpaid principal amounts for various "running bills" and retention monies for the works carried out under the replacement contract. National asserts that: (i) work relating to bills numbered 10, 19, 20, 21, 23, 25-31, 33, 34 and 36-46a was performed prior to 29 August 1989; and (ii) work relating to bills numbered 47, 48 and 49 was performed in April, May and June 1990, respectively. National also asserted that the unpaid retention monies were due and payable by 20 December 1989.

(b) Losses due to non-payment of approved payments

281. National seeks compensation in the amount of IQD 2,102,137 (USD 6,745,524) relating to various amounts which were approved for payment by the State Organization, but allegedly never paid. National stated that the State Organisation withheld approved amounts to set-off the alleged overpayments to Civelecmec.

(c) Losses due to non-settlement of contractual claims of Contract 29

282. National seeks compensation in the amount of USD 4,566,958 for necessary additional expenses incurred on the project. National asserted that it initially submitted a larger claim to the State Organization. It further asserted that in January 1987, after receiving verbal assurances of payment from the State Organization, it reduced its claim to IQD 1,423,221 (USD 4,566,958). The State Organization allegedly failed to make the payment.

(d) Refund of delay penalty

283. National seeks compensation in the amount of IQD 366,938 (USD 1,177,463) relating to delay penalties imposed by the State Organization. National asserted that the completion of Contract 29 was delayed for a number of reasons: (i) the war between Iran and Iraq; (ii) the actions of the State Organization which were in breach of contract; and (iii) the actions of third parties.

(e) Losses due to non-settlement of contractual claims of replacement contract

284. National seeks compensation in the amount of IQD 4,266,484 (USD 13,690,674) for expenses incurred "through circumstances beyond [its] control". National asserted that it submitted its claim consisting of 11 items to the State Organization. The State Organization considered the first seven items on 24 April 1990. The notes of that meeting indicate

that the work relating to the first seven items was performed between 1985 and 1989. In its reply to the article 34 notification, National confirmed that the work relating to the remaining four items was also performed between 1985 and 1989.

2. Analysis and valuation

285. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

286. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), National had a contract with Iraq.

(a) Losses due to non-payment of principal amounts and retention monies

287. In support of its claim, National provided a schedule of bills. This schedule shows the outstanding principal amount, the date of approval of the bills and the date of payment according to the contract. The Panel finds that the work to which the claim for bills numbered 10, 19, 20, 21, 23, 25-31, 33, 34, 36-46a and 47 relates was performed prior to 2 May 1990.

288. With respect to retention monies, the Panel finds that the retention monies became due and payable to National on 20 December 1989, and therefore constitute a debt and obligation of Iraq arising prior to 2 August 1990.

289. With respect to the claim for bills numbered 48 and 49, National asserted that the work relating to these two bills was performed in May and June 1990. A copy of bill number 49 indicates that the work relating to this bill was performed in June 1990. The work relating to bill number 47 was performed in April 1990. Considering the dates of these other bills, the Panel finds that the work relating to bill number 48 was performed in May 1990. Because the work relating to bills 48 and 49 was performed in May and June 1990, the amounts outstanding under these two bills are within the jurisdiction of the Commission.

290. However, as the amounts owed to the State Organization and the customs department of Iraq exceed the amounts outstanding under bills 48 and 49, the Panel finds that National failed to demonstrate a compensable loss. The Panel also notes that the overpayments to Civelecmec were made prior to or in the year 1984. The Panel further finds that National failed to demonstrate that the loss was due to Iraq's invasion and occupation of Kuwait.

291. The Panel recommends no compensation for amounts outstanding under bills 48 and 49.

(b) Losses due to non-payment of approved payments

292. As the amounts owed to the State Organization and the customs department of Iraq exceeds the amount claimed for non-payment of approved payments, the Panel finds that National failed to demonstrate a compensable loss. For the reason referred to in paragraph 290, supra, the Panel further finds that National failed to demonstrate that the loss was due to Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation for losses due to non-payment of approved payments.

(c) Losses due to non-settlement of contractual claims of Contract 29

293. As evidence of its claim for contract losses, National provided copies of correspondence with the State Organization. The first letter containing National's claim was sent to the State Organization on 16 March 1985. As the claims for extra expenses incurred were made in 1985, the Panel finds that the work to which the claim relates was performed prior to 2 May 1990.

(d) Refund of delay penalty

294. As evidence of its claim for contract losses, National provided a copy of a final completion certificate dated 12 January 1987. The Panel consequently finds that all work under the contract was completed prior to 2 May 1990.

(e) Losses due to non-settlement of contractual claims of replacement contract

295. As evidence of its claim for contract losses, National provided a copy of the minutes of the meeting held on 24 April 1990. The Panel finds that the work relating to the claim for losses due to non-settlement of contractual claims of the replacement contract was performed prior to 2 May 1990.

(f) Summary of Panel's findings with respect to contract losses

296. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

297. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

298. National seeks compensation in the amount of USD 3,323,020 for loss of profits. It asserted that it made an average annual operating profit of IQD 230,126 under the replacement contract. National further asserted that

its operating profit would have been 50 per cent higher (i.e. IQD 345,189), if payment for works under the replacement contract had been awarded at 1985 rates as opposed to "1979" rates.

299. National seeks compensation for loss of profits for three years up to April 1993.

2. Analysis and valuation

300. The requirements to substantiate a loss of profits claim have been stated by the Panel at paragraphs 17 and 18, supra.

301. In the article 34 notification, National was requested to provide copies of the contracts on which it expected to make a profit of IQD 345,189 per year, for the three years ending 30 April 1993. In its reply, National stated that it anticipated winning new contracts like the Saddam Hussain Irrigation Project Contract-23 and other land reclamation projects from the Ministry of Irrigation on which it would have made profits. As National's claim for loss of profits is not based on any specific project or contract, it is impossible for the Panel to verify National's assertions. The Panel therefore finds that National's claim for loss of profits is speculative.

302. The Panel recommends no compensation as National failed to provide evidence that establishes with reasonable certainty ongoing and expected profitability.

3. Recommendation

303. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contention

304. National seeks compensation in the amount of USD 3,729,284 for loss of tangible property. As part of this claim, National originally classified an amount of USD 341,724 as other losses, but the alleged loss relating to this amount is more appropriately classified as a loss of tangible property.

305. After the expiry of the maintenance period in September 1990, National was not permitted to re-export its equipment and assets out of Iraq. Nor was it allowed to sell them on the "open market", by which the Panel understands National to refer to the market in Iraq. Certain "government companies" subsequently approached National to buy its equipment and assets in Iraqi dinars. National asserted that although the Iraqi dinars had no value on the international market, it authorised the State Organization to sell its equipment and collect the sale proceeds to prevent theft of the equipment. It further asserted that the State Organization sold its equipment and assets worth IQD 1,055,680 and collected the sale proceeds.

A copy of a letter dated 1 February 1995 from the State Organization indicates that it collected IQD 1,064,555 as sale proceeds.

306. National alleged that the State Organization then unlawfully confiscated the sale proceeds. National seeks compensation in the amount of IQD 1,055,680 (USD 3,387,560), representing the amount of the sale proceeds collected by the State Organization.

307. National also seeks compensation in the amount of USD 341,724 relating to furniture, televisions, videocassette recorders and a car, which were all allegedly stolen. National stated that the car, along with the televisions, videocassette recorders and the furniture, had been given to local people for safekeeping.

2. Analysis and valuation

(a) Sale proceeds

308. In the article 34 notification, National was requested to provide proof that the sale proceeds had been confiscated by the State Organization. In its reply, National provided a copy of a letter dated 6 December 1992 from the State Organization, which states as follows:

> "Sub:- Remaining works of Ishaqi-10 Contract-28
>
> The amount held up from Monthly Certificates for the above contract to cover the Civelecmec Company's debts as per para (2-B) of the Contract is not enough for settlement of above debts mentioned in our letter No. 10373 of 18-11-1992. As the debts are your [National's] responsibility because you are a partner, therefore we can not pay the sale amount of equipment & machine purchases, until finalisation of the Final Account of the above Contract and to understand the Company situation".

309. The Panel finds that this letter indicates that the funds have not been confiscated and that their payment has been deferred only until finalisation of the final account because of the overpayments made to Civelecmec. In any event, even if the funds have been confiscated, the Panel finds that National failed to demonstrate that the funds were confiscated as a direct result of Iraq's invasion and occupation of Kuwait.

(b) Tangible assets

310. With respect to its claim for furniture, spare parts, televisions and video cassette recorders, the Panel finds that National failed to submit sufficient evidence to demonstrate its title to and the value of the property alleged to have been lost.

311. With respect to its claim for the car, National provided a copy of a letter to the "Criminal Police", dated 8 December 1992, which indicates that the car was stolen on 7 July 1991. For the reason referred to in

paragraph 208, supra, the Panel finds that National failed to establish that the loss was a direct loss arising from Iraq's invasion and occupation of Kuwait.

3. Recommendation

312. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

1. Facts and contentions

313. National seeks compensation in the amount of USD 215,469 for payment or relief to others. National originally classified this amount as other losses ("Impossibility, frustration and force majeure"), but it is more appropriately classified as payment or relief to others.

314. National seeks compensation for losses due to non-productivity of workers and losses due to unplanned repatriation of personnel.

(a) Losses due to non-productivity of workers

315. National seeks compensation in the amount of USD 173,198 for salaries paid to its employees while they were forced to stay in Iraq until 8 January 1991. National asserted that after Iraq's invasion and occupation of Kuwait, it applied for exit visas for its employees, which were not issued. After the intervention of the Embassy of Pakistan in Baghdad, the authorities in Iraq started issuing exit visas. National's employees carried out no productive work during the period of their detention.

(b) Losses due to unplanned repatriation of personnel

316. National seeks compensation in the amount of USD 42,271 for expenses incurred in repatriating its employees from Iraq.

317. National asserted that because of the deteriorating situation in Iraq, it purchased 53 air tickets valid for a period of one year for an amount of IQD 7,863 (USD 25,232) from Pakistan International Airlines in Baghdad, in June 1990. However, as exit visas were not issued on time, the tickets could not be used. It further asserted that all its employees ultimately travelled by taxis to Amman and took "UN Sponsored" flights from Amman to Karachi. National alleged that it spent IQD 5,310 (USD 17,039) in transporting its employees to Amman by taxis, but it was not required to pay for the flights.

2. Analysis and valuation

(a) Losses due to non-productivity of workers

318. As evidence of its claim for losses due to non-productivity of workers, National provided a list containing the names of its employees, their job titles, gross salaries and dates of departure from Iraq. It also

provided internally generated payroll records for July, September, November and December 1990. These records contain the names of the employees, their addresses in Pakistan along with the addresses of their banks and their bank account numbers. A sample contract of employment was also provided.

319. The Panel notes that the payroll records have not been counter-signed by the employees. National provided the details of the banks and the bank account numbers of the employees. However, it failed to provide evidence demonstrating the actual transfer of salaries into the bank accounts of the employees. The Panel therefore finds that National failed to provide sufficient evidence to substantiate its claim, and, therefore, how it suffered any loss.

(b) Losses due to unplanned repatriation of personnel

320. As evidence of its claim for repatriation costs, National provided copies of correspondence with Pakistan International Airlines. The documents provided indicate that National received a refund from Pakistan International Airlines in the amount of IQD 5,683.

321. In the article 34 notification, National was requested to explain how the costs claimed exceeded the costs that would, in any event, have been incurred by National in repatriating its employees. In its reply, National stated that "...if the situation would have remained normal the employees would have reached in normal ways and much earlier to the date they actually reached". The Panel finds that National did not incur any extraordinary expenses in repatriating its employees.

322. With respect to its claim for expenses incurred while transporting its employees to Amman, National failed to provide any evidence establishing that it incurred the expenses. The Panel therefore finds that National failed to provide sufficient evidence to substantiate its claim, and, therefore, how it suffered any loss.

3. Recommendation

323. The Panel recommends no compensation for payment or relief to others.

E. Financial losses

1. Facts and contentions

324. National seeks compensation in the amount of USD 5,725,668 for financial losses. National originally classified two loss items in the amounts of USD 720,279 and USD 512,537 as "Other foreign exchange controls" and an amount of USD 4,492,852 as "Other Bank guarantee and performance bond", but they are more appropriately classified as financial losses.

(a) Loss of funds in Iraqi bank account

325. National seeks compensation in the amount of USD 720,279 relating to funds which it left behind in its account with the Rafidain Bank in Iraq.

(b) Losses due to non-cancellation of advance payment guarantee and performance bonds

326. National seeks compensation in the amount of USD 4,492,852 relating to the performance bonds and the advance payment guarantee, which have not been released by the State Organization. National seeks compensation for the value of the performance bonds and the advance payment guarantee, which were issued through the Rafidain Bank.

(c) Interest on unpaid amounts

327. National seeks compensation in the amount of USD 512,537 for interest on unpaid amounts. The amount claimed relates to interest calculated at 14 per cent per annum for the period between the payment due date according to the contract and the date of release of the payment in respect of Contract 28. National asserted that all payments relating to "Running Bills" and the retention monies were approved by 30 April 1989. It further asserted that all payments were due by 15 May 1989 and were actually received by 18 January 1990.

2. Analysis and valuation

(a) Loss of funds in Iraqi bank account

328. As evidence of its claim, National provided untranslated copies of bank statements and copies of various letters from the Rafidain Bank showing the balance of its account as of those dates.

329. The Panel finds that National did not submit sufficient information or documentation to support its asserted losses. National failed to demonstrate that the account is no longer in existence or that National has been denied access to the funds. Further, National did not demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq. Finally, National did not demonstrate that Iraq's invasion and occupation of Kuwait prevented this exchange and transfer.

(b) Losses due to non-cancellation of advance payment guarantee and performance bonds

330. As evidence of its claim for financial losses, National provided a copy of the final acceptance certificate dated 9 October 1990, copies of correspondence relating to guarantees issued by the Government of Pakistan, and a letter from the Finance Division of the Government of Pakistan to the Pakistan Banking Council.

331. In the article 34 notification, National was requested to explain the nature of the security given for the issue of the guarantee and the performance bonds, and how their non-release caused an actual loss. In its reply, National stated that the "Security/Guarantee" was provided by the Ministry of Finance of the Government of Pakistan, and that the losses suffered by National were in the form of commission and interest. The Panel notes that National did not make a claim for bank commission or interest.

332. The Panel further notes that both guarantees, dated 21 June 1982 and 10 December 1985, were payable on demand. In the Statement of Claim, National stated that "it appears that no sooner freezing of Iraq's finances are lifted the Bank guarantees furnished by [National] would be encashed". As the guarantee and the performance bonds, which were issued by the Government of Pakistan have not been encashed, the Panel finds that National failed to demonstrate that the contingent loss materialised. The Panel therefore finds that National failed to demonstrate that it suffered a loss.

(c) Interest on unpaid amounts

333. As evidence of its claim, National provided copies of correspondence exchanged with the Director General, State Commission for Irrigation and Reclamation Projects, and a schedule containing the "Running Bill" numbers, the date of approval, the payment due date as per the contract and the actual date of release of the amounts. The Panel finds that the work to which the claim relates was performed prior to 2 May 1990.

334. The Panel therefore recommends no compensation for interest on unpaid amounts, as the underlying claim relates to work performed prior to 2 May 1990, and is, therefore, outside the jurisdiction of the Commission.

3. Recommendation

335. The Panel recommends no compensation for financial losses.

F. Other losses

1. Facts and contentions

336. National seeks compensation in the amount of USD 999,387 for other losses. National originally classified the amounts of USD 75,191 and USD 578,571 as payment or relief to others and an amount of USD 345,625 as "other impossibility frustration and force majeure" but they are more appropriately classified as other losses.

(a) Losses due to unforeseen expenses on watch and ward

337. National seeks compensation in the amount of USD 75,191 for expenses incurred in hiring guards and a "caretaker" to safeguard its assets and machinery at its project sites in Iraq.

338. National asserted that in order to safeguard its assets and machinery, it hired eight additional guards between 10 August and 21 December 1990. National seeks compensation in the amount of USD 22,523 for wages paid to the eight guards.

339. National asserted that it also hired a "caretaker" between 24 December 1990 and 31 October 1991 to look after its plant and machinery. National seeks compensation in the amount of USD 52,668 for the salary paid to the "caretaker".

(b) Losses due to expenses incurred for office establishment after Iraq's invasion and occupation of Kuwait

340. National seeks compensation in the amount of USD 345,625 relating to expenses incurred in operating its office in Iraq after 1991.

341. National asserted that six of its personnel went to Iraq in October 1991 to take care of administrative matters. It stated that it did not derive any monetary benefits by sending its personnel to Iraq. However, it avoided "unnecessary custom cases or other court cases". National seeks compensation for salaries paid to its personnel, rent for the office, utilities charges, expenses incurred on maintenance of two vehicles and fees paid to the auditors.

(c) Losses due to final settlement to permanent employees

342. National seeks compensation in the amount of USD 578,571 in relation to redundancy costs paid to its employees as a result of its liquidation. National asserted that the main reasons for liquidating the company were the non-payment of approved payments by Iraq, the non-acceptance of its claims by Iraq, the withholding of the performance bonds and the advance payment guarantee by Iraq, the recovery of 15 million United States dollars against liabilities of Civelecmec and the disposal of its assets by Iraq.

2. Analysis and valuation

(a) Losses due to unforeseen expenses on watch and ward

343. In the article 34 notification, National was requested to provide evidence of payment. In its reply, National stated that no records were available as payments were made in cash. The Panel finds that National failed to provide evidence to substantiate its claim, and, therefore, how it suffered any compensable loss.

(b) Losses due to expenses incurred for office establishment after Iraq's invasion and occupation of Iraq

344. As evidence of its claim for other losses, National provided copies of the lease agreements for the years 1991, 1992 and 1993. It also provided a schedule showing the salaries paid to its staff in Iraq from 18 October 1991 to 30 June 1993. The documentation provided by National does not

establish that it incurred the alleged expenses. The Panel therefore finds that National failed to provide sufficient evidence to substantiate its claim, and, therefore, how it suffered any compensable loss.

(c) Losses due to final settlement to permanent employees

345. As evidence of its claim for other losses, National provided schedules of amounts paid to its employees who were made redundant, along with statements showing how the amounts were calculated and bank disbursement vouchers signed by the payees.

346. In this case, the Panel finds that National went into voluntary liquidation because of the State Organization's non-payment of the amounts owed to National. The State Organization withheld the amounts due to the overpayments made to Civelecmec. The overpayments were made prior to Iraq's invasion and occupation of Kuwait. The Panel therefore finds that National failed to demonstrate that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

347. The Panel recommends no compensation for other losses.

G. Interest

348. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

H. Recommendation for National

Table 24. Recommended compensation for National

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	29,367,553	nil
Loss of profits	3,323,020	nil
Loss of tangible property	3,729,284	nil
Payment or relief to others	215,469	nil
Financial losses	5,725,668	nil
Other losses	999,387	nil
Interest	2,441,447	nil
Total	45,801,828	nil

349. Based on its findings regarding National's claim, the Panel recommends no compensation.

XV. MERCATOR - MEDNARODNA TRGOVINA, D.D. (MERCATOR - INTERNATIONAL TRADE, LTD)

350. Mercator-Mednarodna Trogovina, d.d ("Mercator") is a corporation organised according to the laws of Slovenia. The Panel notes that on 7 November 1996, Mercator merged with Poslivni Sistem Mercator d.d., which is Mercator's legal successor.

351. In the "E" claim form, Mercator sought compensation in the amount of USD 780,773 for losses related to business transaction or course of dealing. This loss has been reclassified for the purpose of this report as a financial loss.

352. The Panel therefore considered the amount of USD 1,681,620 for loss of real property, loss of tangible property and financial losses, as follows:

Table 25. Mercator's claim

Claim element	Claim amount (USD)
Loss of real property	713,329
Loss of tangible property	187,518
Financial losses	780,773
Total	1,681,620

A. Loss of real property

1. Facts and contentions

353. On 11 May 1981, Mercator entered into a sub-contract with SGP Slovenija Cest Tehnika, a company incorporated in Slovenia, to provide various support services at a building site in Iraq. The services were for the supply of food products and other articles from Yugoslavia. Following this initial project, Mercator acted as a sub-contractor on a number of separate projects in Iraq for various foreign contractors.

354. Due to an increase in the volume of its business, Mercator asserted that it built its own warehouse with cold storage facilities and also made investments in the Yugoslav club in Baghdad, where it built a restaurant.

355. Mercator asserted that the investment in both facilities comprised "building, installation, assembly, and ceramic works performed by companies from Yugoslavia". It stated that the payments for the work done by the Yugoslav companies were made both in Iraq and in Yugoslavia.

356. Mercator seeks compensation in the amount of USD 713,329 relating to the investments which it made in the warehouse and the Yugoslav club.

2. Analysis and valuation

357. As evidence of its claim for real property losses, Mercator provided invoices in the amount of USD 161,908 relating to the erection expenses incurred on the warehouse and USD 174,370 relating to the refurbishment costs incurred on the Yugoslav club. Mercator stated that it was unable to provide invoices for the full amount of USD 713,329 as they were destroyed during Iraq's invasion and occupation of Kuwait. The Panel notes that these invoices were issued in 1982.

358. In its reply to the article 34 notification, Mercator stated that it was not the owner of the Yugoslav club and that the building in which the club was located was not damaged. Mercator did not provide any evidence to show that the warehouse was damaged during the invasion. The Panel therefore finds that Mercator failed to provide sufficient evidence to demonstrate that it suffered the alleged loss or that the alleged loss was suffered due to Iraq's invasion and occupation of Kuwait. The Panel also finds that Mercator failed to show that it incurred the costs of repairing the alleged damage and, therefore, failed to demonstrate any compensable loss.

3. Recommendation

359. The Panel recommends no compensation for loss of real property.

B. Loss of tangible property

1. Facts and contentions

360. Mercator seeks compensation in the amount of USD 187,518 for loss of tangible property. It stated that it was unable to take its assets and consumables with it when it departed from Iraq. The assets and consumables were deployed on different projects in Iraq.

2. Analysis and valuation

361. In support of its claim for loss of tangible property, Mercator provided internally generated inventory lists for the year ending 31 December 1990. These lists contain a brief description of the lost items and their value. However, the lists lack detail and Mercator provided no explanation of the context in which they were prepared.

362. The Panel finds that Mercator failed to provide sufficient evidence of its title to or right to use the assets and consumables alleged to have been lost or destroyed, or that the assets and consumables were in Iraq at the time of Iraq's invasion and occupation of Kuwait.

3. Recommendation

363. The Panel recommends no compensation for loss of tangible property.

C. Financial losses

1. Facts and contentions

364. Mercator seeks compensation in the amount of USD 780,773 for financial losses. The amount claimed was allegedly held in its bank account with the Rafidain Bank in Iraq.

2. Analysis and valuation

365. In its reply to the article 34 notification, Mercator stated that the funds were still available in its bank account. It further advised that it was unable to prove that the funds were transferable or convertible.

366. This Panel has found in its previous reports that the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorise the transfer of the converted funds out of Iraq, and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

367. The Panel notes that the funds have not been appropriated, removed, stolen or destroyed. The Panel further notes that the funds were not transferable or convertible. The Panel therefore finds that Mercator failed to demonstrate that it suffered a loss or that the alleged loss was suffered due to Iraq's invasion and occupation of Kuwait.

3. Recommendation

368. The Panel recommends no compensation for financial losses.

D. Recommendation for Mercator

Table 26. Recommended compensation for Mercator

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of real property	713,329	nil
Loss of tangible property	187,518	nil
Financial losses	780,773	nil
Total	1,681,620	nil

369. Based on its findings regarding Mercator's claim, the Panel recommends no compensation.

XVI. NCC INTERNATIONAL AB

370. NCC International AB ("NCC") is a corporation organised according to the laws of Sweden. NCC seeks compensation in the amount of IQD 5,080,831 (USD 16,337,077) and USD 10,252,396 (total amount claimed USD 26,589,473) for contract losses and financial losses.

371. The Panel notes that NCC's claim for contract losses relating to unrefunded deposits contains an arithmetic error. The nature of the error is described at paragraph 379, infra. In the Statement of Claim, NCC's claim for contract losses includes a claim for unrefunded deposits in the amount of USD 1,511,112. The Panel has corrected the error and has considered the figure of USD 1,351,111 for unrefunded deposits and the amount of USD 16,943,171 for contract losses.

372. NCC is a wholly-owned subsidiary of Nordic Construction Company AB. Nordic Construction Company AB was formed by a merger between Johnson Construction Company AB and Armerad Betong Vagforbattringar AB ("ABV") in 1989. The contract losses for which NCC seeks compensation arise out of a contract entered into by ABV.

Table 27. NCC's claim

Claim element	Claim amount (USD)
Contract losses	16,943,171
Financial losses	9,646,302
Total	26,589,473

A. Contract losses

1. Facts and contentions

373. NCC seeks compensation in the amounts of IQD 2,080,831 and USD 10,252,396 (total USD 16,943,171) for contract losses allegedly incurred in connection with a contract entered into between ABV and the Ministry of Housing and Construction of Iraq (the "Ministry") on 27 June 1981.

374. The contract was for the construction of 25 shelters, including the central operation hall and building of the Civil Defence Directorate. The contract was to be executed within 1,278 days (approximately 42 months) from the date of the signing of the contract. The maintenance period of 18 months was to commence after the issue of the preliminary certificate of handing over of the project works.

375. The claim is for additional costs incurred and for unrefunded deposits paid to the Ministry.

(a) Additional costs

376. NCC seeks compensation in the amount of IQD 1,980,831 and USD 8,901,285 for additional costs due to contract delays, delays in payment, and variation orders for which it has allegedly not been paid. NCC asserted that it filed three separate claims with the Ministry in 1985, 1986 and 1987 in an attempt to recover these amounts.

377. NCC alleged that the Ministry verbally approved the amounts claimed, with the exception of the claim for delayed payments. Agreement on the amount of this claim was left pending further discussions in the second half of 1990.

(b) Unrefunded deposits

378. NCC seeks compensation in the amounts of IQD 100,000 and USD 1,351,111 for unrefunded deposits.

379. NCC converted an amount of IQD 400,000 (payable to NCC in United States dollars) at the rate of exchange IQD 1 = USD 3.77778, which amounts to USD 1,511,112. However, the rate of exchange stated in the contract is IQD 1 = USD 3.377778, which amounts to only USD 1,351,111. The Panel has considered the lower figure.

380. NCC asserted that after the expiry of the maintenance period, inspection of the sites for the final handing over was carried out between September 1985 and November 1986. NCC also asserted that the Ministry issued the final handing over certificates and paid the retention monies after deducting a cash deposit of IQD 20,000 for each site. The deposits were to be repaid to NCC after the expiry of three years from the date of the final handing over certificates. These deposits were retained by the Ministry as a guarantee against construction related defects.

381. NCC alleged that it had to extend its guarantee obligations. The final inspection, at which time the deposits were to be returned, was scheduled to take place between 10 and 12 March 1990. At the final inspection, NCC alleged that 17 sites were approved and another seven were approved after "minor adjustments" by 15 May 1990. NCC also alleged that inspection of the last site, "Site no. 16", was scheduled for 6 June 1990, but was never performed, as a result of Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

382. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

383. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), NCC had a contract with Iraq.

(a) Additional costs

384. The Panel notes that the inspection of the sites for the final handing over was carried out between September 1985 and November 1986 and in an attempt to recover the additional costs incurred, NCC filed three separate claims with the Ministry in the years 1985, 1986 and 1987. NCC provided copies of the claims. The Panel finds that the work to which the claim for additional costs relates was performed prior to 2 May 1990.

385. The Panel recommends no compensation for additional costs incurred in respect of work performed prior to 2 May 1990, as these costs relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(b) Unrefunded deposits

386. As evidence of its claim for unrefunded deposits, NCC provided a copy of the contract and a sample copy of a "Final Handing over Report for Site No. 1" dated 5 August 1985. This report indicates that the deposit amount of IQD 20,000 was to be retained as a guarantee against construction related defects and was payable to NCC after the guarantee period of three years.

387. Since the inspection of the sites in connection with the final handing over was carried out between September 1985 and November 1986, the Panel finds that the guarantee period for all the sites should have expired, in the normal course of events, by November 1989. NCC submitted an internally generated list dated 15 March 1990, which indicates that the guarantee period for 24 sites expired by December 1989 and for the remaining one site on 10 February 1990.

388. NCC alleged that it had to extend its guarantee obligations, and that the deposit amounts for all the twenty five sites was to be returned after all the sites were finally approved by the Ministry. NCC did not provide evidence supporting these allegations. NCC also failed to provide evidence that the sites were finally approved on the dates it alleges and that the last site could not be approved due to Iraq's invasion and occupation of Kuwait. The Panel notes that on 16 May 2000, the Commission received a reply to the article 34 notification from the Permanent Mission of Sweden on behalf of NCC. The reply stated that NCC would not be able to submit any further information or evidence because its archives in Iraq were destroyed during Iraq's invasion and occupation of Kuwait.

389. In the absence of any evidence to the contrary, the Panel finds that the work to which the claim for unrefunded deposits (for the 24 sites, which were allegedly approved) relates was performed prior to 2 May 1990.

390. The Panel recommends no compensation for unrefunded deposits in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and are, therefore, outside the jurisdiction of the Commission.

391. With respect to the claim for unrefunded deposit for Site no. 16, the Panel notes that the site had not been approved. Further, NCC also failed to provide sufficient evidence to demonstrate that the inspection allegedly scheduled for 6 June 1990, nearly two months before Iraq's invasion, could not be performed as a result of Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation for the unrefunded deposit relating to Site no. 16.

3. Recommendation

392. The Panel recommends no compensation for contract losses.

B. Financial losses

1. Facts and contentions

393. NCC seeks compensation in the amount of IQD 3,000,000 (USD 9,646,302) for financial losses. The amount claimed was allegedly held in its bank account with the Rafidain Bank in Iraq.

394. Article 10 of the contract with the Ministry permitted ABV/NCC "to transfer the extra amount remaining in Iraq and which is in the Iraqi Currency to any other currency to be selected by him in accordance with the regulations of the Central Bank of Iraq". In December 1988, NCC requested the Ministry to approve the transfer of IQD 3,000,000 held in its bank account with the Rafidain Bank.

395. On 13 December 1988, the Ministry forwarded NCC's request to the Central Bank of Iraq to "take the necessary measures". NCC asserted that the transfer instructions given by the Ministry to the Central Bank of Iraq were never effected.

2. Analysis and valuation

396. As evidence of its financial losses, NCC provided a copy of a letter to the Ministry dated December 1988, requesting the Ministry to approve the transfer of IQD 3,000,000. NCC also provided a copy of a letter from the Ministry dated 13 December 1988, requesting the Central Bank of Iraq to take "the necessary measures". However, NCC failed to provide evidence demonstrating the link between the Central Bank of Iraq's failure to approve the transfer and Iraq's invasion and occupation of Kuwait. Further, NCC also failed to provide evidence of its ownership and the balance of its bank account with the Rafidain Bank as at 2 August 1990.

397. The Panel finds that NCC did not submit sufficient information or documentation to support its asserted losses. NCC failed to demonstrate

that the account is no longer in existence or that NCC has been denied access to the funds. Further, given the period of almost eighteen months between the correspondence regarding the proposed transfer of the funds and 2 August 1990, the Panel finds that NCC did not demonstrate that the exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

3. Recommendation

398. The Panel recommends no compensation for financial losses.

C. Recommendation for NCC

Table 28. Recommended compensation for NCC

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	16,943,171	nil
Financial losses	9,646,302	nil
Total	26,589,473	nil

399. Based on its findings regarding NCC's claim, the Panel recommends no compensation.

XVII. FUSAS FUAT SOYLU CONSTRUCTION AND INDUSTRY INC. CO.

400. Fusas Fuat Soylu Construction and Industry Inc. Co. ("Fusas") is a corporation organised according to the laws of Turkey. At the time of Iraq's invasion and occupation of Kuwait, Fusas operated in the construction industry. The Panel notes that in March 1998, Fusas' name was changed to Fusas Fuat Soylu Insaat Taahhut Turizm Tekstil Mermer Sanayi Ve Ticaret Anonim Sirketi.

401. In the "E" claim form, Fusas sought compensation in the amount of USD 4,403,320 for contract losses, real property losses and payment or relief to others.

402. The Panel has reclassified elements of Fusas' claim for the purposes of this report. The Panel therefore considered the amount of USD 4,403,320 for contract losses, loss of tangible property, payment or relief to others and interest, as follows:

Table 29. Fusas' claim

Claim element	Claim amount (USD)
Contract losses (contracts with Iraqi parties)	1,791,839
Contract losses (contracts with non-Iraqi parties)	539,316
Loss of tangible property	1,033,110
Payment or relief to others	322,000
Interest	717,055
Total	4,403,320

A. Contract losses (contracts with Iraqi parties)

1. Facts and contentions

403. Fusas seeks compensation in the amount of USD 1,791,839 for contract losses. The losses were allegedly incurred in connection with various contracts for projects in Iraq.

(a) Unpaid promissory notes

404. Fusas seeks compensation in the amount of USD 1,489,506 for eleven unpaid promissory notes issued between 1988 and 1990, with two-year maturities. These promissory notes relate to various contracts that were performed between 1984 and 1990.

405. Fusas asserted that prior to Iraq's invasion and occupation of Kuwait, a banking agreement was signed between the Central Banks of Turkey and

Iraq, "granting two years deferred payment terms to Iraq for contracts executed by Turkish contractors in Iraq". Fusas further asserted that, prior to 1988, regular payments were received from the Central Bank of Iraq. However, thereafter, due to the financial crisis in Iraq, the Central Bank of Iraq stopped making payments due on the promissory notes. On 2 August 1990, Fusas held nine unpaid promissory notes. Two further promissory notes were issued in September 1990, which Fusas alleged also remain unpaid.

(b) Amounts due for calcium carbide exported to Iraq

406. Fusas seeks compensation in the amount of USD 46,013 for 1,525 barrels of calcium carbide, which it exported to Iraq on 15 August 1989. The purchaser, Eastern Gases Company of Baghdad, paid the Rafidain Bank of Iraq in Iraqi dinars; however, the bank was unable to transfer the amount in United States dollars as it did not have the authorisation to do so. Fusas asserted that the amount remains unpaid due to Iraq's invasion and occupation of Kuwait.

(c) Al-Rasheed Detergent Project

407. Fusas seeks compensation in the amount of USD 86,080 in relation to the Al-Rasheed Detergent Project. The claim comprises USD 28,800 for unpaid invoices in respect of 12 per cent of the project works, which it had allegedly completed, and USD 57,280 relating to an unrecovered performance bond.

(i) Unpaid invoices

408. Fusas stated that on 25 July 1990, it entered into a contract with the State Enterprise for Vegetable Oils of Iraq (the "State Enterprise") for the erection of equipment and machinery and electrical installations. The contract, however, appears to have been signed on 15 July 1990. The contract period was 180 days. Fusas asserted that the project site was handed to it on 16 June 1990 and that it commenced work on that day. The contract value was IQD 155,000 and USD 240,000.

409. The erection of the equipment was to be carried out in accordance with the drawings and technical specifications provided by Ballestra SpA of Italy ("Ballestra"). Ballestra was also the main supplier of the plant and equipment. The terms of the contract entered into between Fusas and the State Enterprise provides that the State Enterprise would authorise Fusas to enter into a contract with Ballestra so that Ballestra would make the payment of the United States dollar portion of the contract directly to Fusas.

410. Fusas alleged that after Iraq's invasion and occupation of Kuwait, it was compelled to continue work at the project site until all the machinery was erected. Fusas asserted that, by 17 October 1990, all of its personnel had departed from Iraq.

411. At the time of its departure from Iraq, Fusas had completed 12 per cent of the project works, and consequently seeks compensation for 12 per cent of the United States dollar portion of the contract value, which amounts to USD 28,800.

(ii) Unrecovered performance bond

412. The contract between Fusas and the State Enterprise required Fusas to provide a performance bond, payable at the rate of 8 per cent of the total contract value. The performance bond was to be released upon the issue of the final acceptance certificate. However, Fusas asserted that half the value of the performance bond was to be released on the completion of the project works (the expected date was 16 December 1990) and the remaining half was to be released a year later on 16 December 1991. Fusas asserted that the performance bond in the amount of USD 57,280 could not be released because Fusas was unable to complete the project works due to Iraq's invasion and occupation of Kuwait.

(d) Rusafa-Hilla Grain Silo Projects

413. Fusas seeks compensation in the amount of USD 170,240 for an unrecovered performance bond issued in respect of the Rusafa-Hilla Grain Silo Projects.

414. On 9 December 1987, Fusas entered into a contract with Al-Mansoor Contracting Co. of Iraq for the execution of erection works of machinery and equipment. The total contract value was IQD 665,000. The project works were to be completed within a period of 12 months for the Rusafa grain silo and five months for the Hilla extension. Fusas alleged that due to certain problems, an extension of one year and 25 days was granted and the provisional acceptance certificate was issued on 4 January 1990.

415. Fusas asserted that it gave a performance bond for 8 per cent of the total contract value of USD 2,128,000 (IQD 665,000 at an exchange rate of IQD 1 = USD 3.2), which amounts to USD 170,240.

416. In the article 34 notification, Fusas was requested to provide additional information relating to its claim for the unreleased performance bond. In its reply, Fusas asserted that its claim for the unreleased performance bond should have been USD 172,355 and not USD 170,240. However, Fusas specifically stated that it was not revising its claim and is seeking compensation only for USD 170,240. In its reply, Fusas indicated that it was seeking compensation for 4 per cent of IQD 665,000 (IQD 26,600) relating to the unreleased performance bond; IQD 20,658 for unpaid retention money; and IQD 6,454 for another performance bond relating to extra works.

2. Analysis and valuation

417. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

(a) Unpaid promissory notes

418. Fusas provided a schedule marked as "Doc.11.1". This schedule indicates all of the promissory notes were issued for projects that were executed for various Iraqi employers. Copies of the promissory notes provided by Fusas state that the Central Bank of Iraq was the guarantor. The promissory notes also state that they were "negotiable only among Turkish commercial banks as agreed upon between C.B.I. and C.B.R.T. [Central Bank of Iraq and Central Bank of Republic of Turkey] otherwise with prior written consent of C.B.I.". The Panel therefore finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Fusas had a contract with Iraq.

419. "Doc.11.1" also indicates the contracts the promissory notes relate to and the dates when the contracts were completed. Fusas also provided copies of the contracts for promissory notes 10 and 11 issued in September 1990 along with their provisional acceptance certificates.

420. Of the 11 promissory notes, nine relate to contracts that were completed prior to 2 May 1990. Seven of these promissory notes were issued in 1988 and two in 1989. Although the tenth promissory note was not issued until September 1990, the Panel finds that Fusas' performance under the related contract was completed in February 1990.

421. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

422. With respect to the eleventh promissory note, Fusas asserted that it was for retention relating to a contract for the construction of building "B602 in 39B Project". This contract was signed on 13 March 1986 between Fusas and the Director of State Organisation for Industrial Projects of Iraq. Clause 5(b) of the contract provides for the release of the balance 50 per cent of the retained amount on the issue of the final acceptance certificate. Fusas asserted that the final acceptance of the project works was completed on 8 September 1990. Fusas did not provide a copy of the final acceptance certificate nor any other evidence, which would establish that the project works were finally accepted on 8 September 1990. The Panel finds that Fusas failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered any loss.

423. The Panel recommends no compensation for contract losses relating to all of the eleven unpaid promissory notes.

424. The Panel finds that for the purposes of the Security Council resolution 687 (1991), the deferred payments agreement did not have the effect of novating the debt.

(b) Amounts due for calcium carbide exported to Iraq

425. As evidence of its claim for contract losses, Fusas provided a copy of a letter dated 5 April 1990 from the Treasury and Foreign Trade Consultancy, Banking and Foreign Exchange General Directorate of Turkey. This letter confirmed that as of that date Fusas had not received the amount of USD 46,013 due on the project. Fusas also provided a copy of the custom exit declaration dated 15 August 1989 and a copy of a letter dated 30 January 1990 from the Rafidain Bank. This letter indicates that the purchaser, Eastern Gases Company of Baghdad, had paid the Rafidain Bank in Iraqi dinars, however, the Rafidain Bank was unable to pay Fusas in United States dollars because it did not have the authorisation to do so.

426. In this case, the goods were exported to Iraq on 15 August 1989. Rafidain Bank's letter dated 30 January 1990 clearly indicates that the amount of USD 46,013 had not been paid to Fusas because the Rafidain Bank did not have the authorisation to do so. Fusas failed to provide sufficient evidence to establish that the Rafidain Bank was unable to obtain the authorisation to transfer the amount in United States dollars as a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore finds that Fusas failed to provide sufficient evidence to establish that the loss was a direct result of Iraq's invasion and occupation of Kuwait.

427. The Panel recommends no compensation for amounts due for calcium carbide exported to Iraq.

(c) Al-Rasheed Detergent Project

428. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Fusas had a contract with Iraq.

(i) Unpaid invoices

429. In support of its claim for unpaid invoices in the amount of USD 28,800, Fusas provided a copy of the contract and a copy of a letter dated 28 June 1990 from Ballestra confirming that Ballestra would pay Fusas the amount of USD 240,000. This letter further states that payments would be made to Fusas after Ballestra receives payments from the State Enterprise "...against [Fusas'] monthly invoices accompanied by monthly reports duly countersigned by [Ballestra's] Site Manager". Fusas also

provided a copy of a letter dated 19 February 1991 from Ballestra confirming that 12 per cent of the project works were completed.

430. In this case, the Panel finds that the work was performed after 2 May 1990 and is, therefore, within the jurisdiction of the Commission. The Panel further finds that Fusas had completed 12 per cent of the project works before it left Iraq. Therefore, in principle, the amount of USD 28,800 is compensable. However, Fusas provided a copy of a letter dated 4 February 1993 from the Exim Bank of Turkey, which indicates that Fusas received partial compensation. This letter states that against a claim of USD 28,800, Fusas has been partially compensated and the amount of USD 17,280 could not be credited to Fusas' account by the bank due to "lack of financial resources". As the amount of USD 17,280 remains unpaid from the claimed amount of USD 28,800, the Panel therefore recommends compensation in the amount of USD 17,280.

(ii) Unrecovered performance bond

431. In support of its claim for the unrecovered performance bond, Fusas provided a copy of the general conditions of the contract and a copy of a financial statement of its branch office in Iraq that shows an amount of IQD 126,843 due for guarantees and performance bonds. Fusas converted this amount to United States dollars at the exchange rate IQD 1 = USD 3.2 resulting in the amount of USD 405,897. Fusas asserted that the amount of USD 405,897 represents the sum of all guarantees not released as at 31 December 1990, and USD 57,280 of this amount is the performance bond for the Rasheed Detergent Plant.

432. In the article 34 notification, Fusas was requested to provide a copy of the performance bond and proof of actual payment. In its reply, Fusas stated that it did not have a copy of the guarantee. Fusas was also unable to provide any documentary or other evidence that might constitute proof of payment. The Panel notes that Fusas failed to provide a copy of the performance bond, and finds that the financial statement provided by Fusas of its branch office in Iraq for the year 1990 does not constitute sufficient evidence of payment. The Panel therefore finds that Fusas failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered any loss.

(d) Rusafa-Hilla Grain Silo Projects

433. Fusas stated that the Al-Mansoor Contracting Co. was a "Government Co. of Iraq". Additionally, the terms of the contract clearly stipulate that the United States dollar portion of the contract value was to be paid through promissory notes in accordance with the provisions of the banking agreement signed between the Central Banks of Iraq and Turkey. This evidence satisfies the Panel that Fusas had contracted with an Iraqi state agency.

434. As evidence of its claim for contract losses, Fusas provided a copy of the contract along with the General Terms and Conditions and a copy of the final invoice dated "20 Haz 1989". As proof of payment for the unrecovered performance bond, Fusas provided a copy of a financial statement for its branch office in Iraq.

435. In this case, the contract was signed on 9 December 1987. Contract works were to be finished by 9 December 1988. Fusas alleged that due to certain minor problems, it was granted an extension of 1 year and 25 days and that the provisional acceptance certificate was issued on 4 January 1990. Clause 17 of the General Terms and Conditions provides for a maintenance period of 12 months from the taking over certificate. The documents provided by Fusas indicate that 10 per cent of the contract price, which Fusas asserted relates to retention was to be released upon the issue of the final acceptance certificate. As the provisional acceptance certificate was allegedly issued on 4 January 1990, the maintenance period should have expired on 4 January 1991 after which the final acceptance certificate would have been issued.

436. With respect to its claim for retention monies, Fusas did not provide a copy of the provisional acceptance certificate nor sufficient evidence, which would establish that it was given an extension of one year and 25 days. The Panel therefore finds that Fusas failed to provide sufficient evidence to establish that it was entitled to receive the retention monies upon the issue of the final acceptance certificate on 4 January 1991. With respect to its claim for the unrecovered performance bond, Fusas failed to provide a copy of the performance bond or any independent proof of actual payment. The Panel finds that Fusas failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered any loss.

3. Recommendation

437. The Panel recommends compensation in the amount of USD 17,280 for contract losses (contracts with Iraqi parties).

B. Contract losses (contracts with non-Iraqi parties)

1. Facts and contentions

438. Fusas seeks compensation in the amount of USD 539,316 for contract losses. The losses were allegedly incurred in connection with two contracts.

(a) Equipment for Al-Rasheed Detergent project

439. Fusas seeks compensation in the amount of USD 35,900 for unpaid retention monies. On 26 January 1990, Ballestra placed an order with Fusas to manufacture equipment and materials for the project for a lump sum price of USD 359,000. Fusas asserted that it received payment of 90 per cent of the total price. In accordance with the terms of the order, the 10 per

cent balance was to be paid to Fusas at the time of "plant acceptance". Fusas further asserted that the project could not be completed due to Iraq's invasion and occupation of Kuwait and therefore seeks compensation for the 10 per cent balance (USD 35,900) of the unpaid amount.

(b) Equipment for Mamoon Detergent project

440. Fusas seeks compensation in the amount of USD 448,416 for unpaid amounts relating to an order placed by Ballestra for the fabrication of steel structures, equipment and vessels for the project. Fusas asserted that due to Iraq's invasion and occupation of Kuwait the manufactured equipment could not be exported to Iraq. Fusas also seeks compensation in the amount of USD 55,000 for storage expenses (total amount claimed USD 503,416).

441. Ballestra placed an order dated 6 June 1990 for the supply of equipment and materials for the project, for a lump sum price of USD 587,810. Manufactured goods were to be delivered "FOT [free on truck] Istanbul" on 15 August 1990. Contract terms were cost and freight to Baghdad, to be delivered after 20 days.

442. Fusas asserted that it commenced fabrication of the steel structures and equipment after the issue of the letter of intent on 13 April 1990 so those goods could be dispatched to Iraq in the first week of September 1990.

443. After Iraq's invasion and occupation of Kuwait, Ballestra in its facsimile dated 30 August 1990 requested Fusas to "put on hold" the order until 1 December 1990. Ballestra also informed Fusas that if the order was not resumed by 1 December 1990, it still wished to buy certain items from Fusas for an amount of USD 113,942. Ballestra purchased an item from the order and certain other items and paid to Fusas the amount of USD 113,942.

444. Fusas seeks compensation in the amount of USD 448,416 for building units 9, 10, 11, 12 and 20 because Ballestra did not purchase this equipment, as it could not be shipped to Iraq due to Iraq's invasion and occupation of Kuwait.

445. Fusas also seeks compensation in the amount of USD 55,000 for expenses incurred on "storage protection and safeguard expenses". Fusas asserted that the "structures and equipment fabricated for Mamoon plant was stored outdoors in Fusas fabrication shop in Turkey". The documents provided by Fusas indicate that it is claiming the amounts of USD 35,680 for storage expenses and USD 19,320 for expenses incurred on sand blasting and painting the equipment.

2. Analysis and valuation

(a) Equipment for Al-Rasheed Detergent project

446. As evidence of its claim for contract losses, Fusas provided a copy of the order dated 26 January 1990 from Ballestra and a copy of a facsimile dated 10 December 1991, also from Ballestra, which confirms that the unpaid balance of 10 per cent of the total amount could not be paid to Fusas as the project works could not be completed due to Iraq's invasion and occupation of Kuwait. Fusas also provided a copy of a letter dated 13 June 1994 from "VAKIFBANK" of Turkey to the Turkish Chamber of Commerce, which confirms that the 10 per cent balance of the total amount remains unpaid as of that date. Fusas also provided customs documents and truck consignment notes, which indicate that the fabricated equipment was sent to Iraq.

447. This Panel has held that retention monies are a form of security held by an employer to ensure fulfilment by a contractor of its obligations to complete the project and to remedy defects after take over of the completed project by the employer.

448. The Panel notes that Fusas had received 90 per cent of the contract value and the 10 per cent balance was to be paid at the time of plant acceptance. According to the terms of the order, Fusas had to manufacture certain equipment and transport it to Iraq. The documents provided by Fusas indicate that the equipment had been sent to Iraq. The Panel also notes that Ballestra has not filed a claim for compensation with the Commission. The Panel finds that the project was ongoing on 2 August 1990 and that Fusas' inability to collect the 10 per cent balance was the direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends compensation in the amount of USD 35,900 for unpaid retention monies.

(b) Equipment for Mamoon Detergent project

449. As evidence of its claim for contract losses, Fusas provided a copy of the order and a copy of a facsimile dated 27 June 1990 from Fusas to Ballestra indicating that the goods would be partially ready for shipment by 30 August 1990. It also provided a copy of a facsimile dated 12 July 1990 from Ballestra in which Ballestra insisted that the goods should be ready for shipment by the first week of September 1990. Fusas also provided a copy of a facsimile dated 30 August 1990 from Ballestra requesting it to hold the order until 1 December 1990. It also provided a copy of a facsimile dated 17 September 1990 from Ballestra, asking Fusas to use the ready equipment for other projects if work at the Mamoon project would not proceed due to Iraq's invasion and occupation of Kuwait.

450. In support of its claim for storage expenses, Fusas provided copies of correspondence exchanged with Ballestra.

451. In this case, the order was placed on 6 June 1990 and Fusas asserted that it commenced the fabrication of the equipment after the letter of intent was issued on 13 April 1990. The Panel notes that in July 1990, Ballestra insisted that the equipment should be ready for shipment in the first week of September 1990. On 30 August 1990, Ballestra asked Fusas to hold the order until 1 December 1990. The Panel therefore finds that the goods fabricated by Fusas could not be shipped to Iraq as a direct result of Iraq's invasion and occupation of Kuwait. The Panel also notes that Ballestra has not filed a claim for compensation with the Commission.

452. In the article 34 notification, Fusas was requested to provide the net cost of the equipment because the contract price included cost and freight to Baghdad. In its reply, Fusas advised that it would have incurred expenditure in the amount of USD 43,700 in freight costs, packing costs, and stamps and export duties. Fusas also advised that it had sold the equipment as scrap for a total value of USD 57,678. In arriving at an appropriate recommendation for compensation, the Panel finds that amounts should be deducted from the claimed amount of USD 448,416 to take account of (i) expenses which Fusas would have incurred in shipping the goods to Iraq, and (ii) the sale proceeds realised by Fusas. This results in a figure of USD 347,038, which the Panel recommends be compensated to Fusas.

453. With respect to its claim for expenses incurred on sand blasting or painting the equipment, Fusas failed to provide any invoices or other proof which would establish that it incurred the alleged expenses. The Panel therefore finds that Fusas failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered any loss.

454. With respect to its claim for storage expenses, Fusas asserted that it did not "pay the sum of USD 35,680 to another party. It was the assessed loss of Fusas". While the Panel accepts that Fusas may not have paid the claimed amount to another party nonetheless the Panel finds that Fusas has failed to establish that it incurred any expenses in relation to this loss item, and therefore, how it suffered any compensable loss.

3. Recommendation

455. The Panel recommends compensation in the amount of USD 382,938 for contract losses (contracts with non-Iraqi parties).

C. Loss of tangible property

1. Facts and contentions

456. Fusas seeks compensation in the amount of USD 1,033,110 for loss of tangible property. This amount includes USD 283,110 for loss of inventory, USD 250,000 for loss of camp, and USD 500,000 for loss of vehicles. Fusas asserted that it had to leave behind all its property at the time it left Iraq.

(a) Loss of inventory

457. With respect to its claim for loss of inventory, Fusas appears to be claiming for office furniture, electrical equipment and assorted electronic items that it left in its office in Baghdad, Iraq.

(b) Loss of camp

458. With respect to its claim for loss of camp, Fusas appears to be claiming for heavy camp equipment and plant. Fusas stated that it had lodging facilities, a labour camp and a stockyard in the "Meshtel Quarter of Baghdad at the border at 39 B Project opposite to Duty Free shop". The camp could house 200 people and was equipped with a restaurant. The camp also had mechanical workshops and a stockyard "full of erection vehicles, cranes, tools and equipment kept in 30 Nos. of 40 feet containers".

(c) Loss of vehicles

459. Fusas appears to be claiming for the loss of 11 vehicles, which it allegedly left behind in Iraq.

2. Analysis and valuation

(a) Loss of inventory

460. In support of its claim for loss of inventory, Fusas provided its financial accounts produced for the Iraqi authorities for the years ending 31 December 1989 and 1990. It also provided an internally generated inventory list dated 3 August 1990. This list indicates the description of the items and their quantity.

(b) Loss of camp

461. In support of its claim for loss of camp, Fusas provided copies of two police reports dated 13 May 1991 and 4 December 1991, respectively. These reports indicate that certain items (i.e. electronic typewriter, photocopying machine, garments and assorted electronic items) were stolen from its camp. It also provided a list entitled "Machine and Outfit List" dated June 1989. This list describes the equipment, the quantity and the model and the name of the manufacturer.

(c) Loss of vehicles

462. In support of its claim for loss of vehicles, Fusas provided an English translation of a letter dated 27 September 1991 from the company secretary of its branch office in Iraq, which states that a small truck, a photocopying machine and two typewriters were stolen from the branch office. It also provided a list of 11 vehicles dated August 1990, which indicates the model, the chassis and engine numbers, the temporary permit

numbers and the dates of "latest extension of car permit by General Customs Direct" of Iraq.

463. In order to establish a loss of tangible property claim, this Panel has found that a claimant must submit evidence such as certificates of title, receipts, purchase invoices, bills of lading, insurance documents, customs records, inventory lists, asset registers, hire purchase or lease agreements, transportation documents and other relevant documents generated prior to 2 August 1990. A claimant must also provide evidence which would establish that it paid for the tangible property or confirm the value of the tangible property. The Panel has taken note of Fusas' assertion that it left all its documents in its Baghdad office.

464. The Panel finds that Fusas failed to submit sufficient evidence to demonstrate its title to or right to use the assets and the value of those assets. The Panel finds that Fusas failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

465. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

1. Facts and contentions

466. Fusas seeks compensation in the amount of USD 322,000 for payment or relief to others. Fusas asserted that it incurred expenditure in the amount of USD 300,000 for compensation paid to its employees, and USD 22,000 for evacuation costs.

(a) Compensation paid to employees

467. Fusas asserted that at the time of Iraq's invasion and occupation of Kuwait, it had 46 employees working at the Al-Rasheed Detergent project site. The employer refused to issue exit visas and compelled Fusas to continue working. Fusas further asserted that it managed to negotiate with the employer to issue two to three exit visas every week for its employees and the last of its employee left Iraq on 17 October 1990.

468. Fusas also asserted that it "faced extreme pressure from the families of these labours" and upon their return to Turkey, it had to pay compensation to them. In its reply to the article 34 notification, Fusas stated that compensation was paid due to "both goodwill and obligation" and also because it had terminated the contracts of its employees.

469. Fusas further asserted that it used to give bonuses to its employees. Incentives were given to employees depending upon their length of service, performance and the profits obtained from the projects. Bonuses were given to employees even prior to Iraq's invasion and occupation of Kuwait.

470. Fusas asserted that it gave compensation in the amount of USD 300,000 in 3 instalments of USD 100,000 each to its employees for the months of August, September and October 1990. Fusas also indicated that all its employees received USD 2,500 as compensation from the Commission.

(b) Evacuation costs

471. Fusas seeks compensation in the amount of USD 22,000 for expenses incurred on evacuating its employees from Iraq. Fusas did not provide much information relating to this loss element. However, in its reply to the article 34 notification, it stated that it had to pay exorbitant amounts both to hire taxis to transport its employees and to obtain exit visas.

2. Analysis and valuation

(a) Compensation paid to employees

472. As evidence of its claim for payment or relief to others, Fusas provided signed copies of payroll records for the months of August, September and October 1990. It also provided an incomplete copy of the payroll for the month of July 1990, and reports, which indicate that bonuses were paid even prior to Iraq's invasion and occupation of Kuwait. It also provided a list containing the names of the 46 employees, and copies of the exit visas from the passports of only seven employees, which indicates that they departed from Iraq on different dates.

473. Fusas failed to explain why it continued to pay compensation to all the 46 employees from August to October 1990, when two to three employees departed from Iraq every week and the last employee left Iraq on 17 October 1990.

474. The total amount of wages paid to the 46 employees in the month of July 1990 was USD 36,653. Therefore, the payment of USD 100,000 each month was much higher than the usual payroll of USD 36,653, which Fusas confirmed. Fusas failed to provide a breakdown of the amounts paid as salaries, bonuses and amounts paid "due to goodwill and obligation". It also failed to provide a breakdown of amounts paid to the employees due to the termination of their contracts. The Panel also notes that the signatures of the employees on the payroll records for the months of August to October 1990 do not match with the signatures on the regular monthly payroll records.

475. Fusas also failed to explain how the payment of salaries and bonuses to the employees on their return to Turkey for the months of August, September and October 1990 was due or incurred as a direct result of Iraq's invasion and occupation of Kuwait.

476. The Panel therefore finds that Fusas failed to provide sufficient evidence to substantiate its claim or that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(b) Evacuation costs

477. Fusas did not provide any evidence in support of its claim for this loss element nor did it explain how the claimed amount was calculated. The Panel therefore finds that Fusas failed to provide sufficient evidence to substantiate its claim, and therefore, how it suffered any losses.

3. Recommendation

478. The Panel recommends no compensation for payment or relief to others.

E. Interest

479. With reference to the issue of interest, the Panel refers to paragraphs 20 and 21, supra, of this report.

F. Recommendation for Fusas

Table 30. Recommended compensation for Fusas

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses (contracts with Iraqi parties)	1,791,839	17,280
Contract losses (contracts with non-Iraqi parties)	539,316	382,938
Loss of tangible property	1,033,110	nil
Payment or relief to others	322,000	nil
Interest	717,055	(--)
Total	4,403,320	400,218

480. Based on its findings regarding Fusas' claim, the Panel recommends compensation in the amount of USD 400,218. In relation to Fusas' claim for contract losses (contracts with Iraqi parties), the Panel finds the date of loss to be 2 August 1990. In relation to Fusas' claim for contract losses (contracts with non-Iraqi parties) the Panel finds the date of loss to be 2 August 1990, for the unpaid retention monies relating to the Al-Rasheed Detergent project, and 30 August 1990 for the unpaid amounts relating to the Mamoon Detergent project.

XVIII. HASAN CANPOYRAZ INSAAT MÜTEAHHITLIGI

481. Hasan Canpoyraz Insaat Müteahhitligi ("Hasan") is a corporation organised according to the laws of Turkey operating in the construction industry.

482. In the "E" claim form, Hasan sought compensation in the amount of USD 2,475,273 for contract losses and loss of tangible property.

483. For the purposes of this report, the Panel has reclassified an amount of USD 400,000, which Hasan had included in its claim for loss of tangible property, as loss of real property. Accordingly, the Panel considered the amount of USD 2,475,273 for contract losses, loss of real property and loss of tangible property, as follows:

Table 31. Hasan's claim

Claim element	Claim amount (USD)
Contract losses	1,802,952
Loss of real property	400,000
Loss of tangible property	272,321
Total	2,475,273

A. Contract losses

1. Facts and contentions

484. Hasan seeks compensation in the amount of USD 1,802,952 for contract losses. The losses were allegedly incurred in connection with three contracts for projects in Iraq.

485. First, on 18 April 1982, Hasan entered into a contract with the Ministry of Irrigation, Public Institution of Land Improvement of Iraq (the "Ministry") for the execution of the Kut Drainage Scheme project in Iraq (the "Kut Project"). The contract price was USD 10,717,562.

486. Second, on 22 June 1982, Hasan entered into a contract with the Ministry for the execution of the Razzaza Main Drainage project in Iraq (the "Razzaza Project"). The contract price was USD 4,467,404.

487. Third, on 14 April 1982, the Ministry awarded the Iskandaria Mahaweel Scheme Stage Two contract (the "Mahaweel Project") to a consortium comprising Hasan and Doğan Aksel, another Turkish company. Hasan asserted that due to the effects of the war between Iran and Iraq, Doğan Aksel withdrew from the consortium on 1 January 1984. Doğan Aksel assigned its share of the contract to Hasan. The contract price was USD 14,999,435.

(a) Kut Project and Razzaza Project

488. Hasan asserted that the project works for the Kut Project finished on 1 November 1984 and that the final acceptance took place on 1 November 1985.

489. Hasan asserted that the project works for the Razzaza Project finished in November 1984 and that the final acceptance took place in November 1985.

490. Hasan also asserted that the unpaid retention monies for both of the projects were to be released after it had obtained the necessary clearance certificates from the authorities in Iraq. Hasan stated that the required clearance certificates could not be obtained until 1990 due to the war between Iran and Iraq and the administrative delays caused by the authorities in Iraq.

491. Hasan asserted that the unpaid retention monies amount to USD 196,000, and USD 426,020 for the Razzaza and Kut Projects, respectively. Hasan alleged that due to the economic effects of the war between Iran and Iraq, the Central Banks of Iraq and Turkey agreed that payments for Hasan's work would be made through bonds with a two-year maturity date. Hasan further alleged that on 22 July 1990, two bonds were presented to the Central Bank of Iraq. However, as a result of Turkey's embargo on Iraq the operation was frozen by the Central Bank of Iraq. Hasan seeks compensation in the amounts of USD 196,000 and USD 426,020 relating to the unpaid retention monies for both the projects, respectively.

(b) Mahaweel Project

492. Hasan asserted that the preliminary acceptance of the project works took place in January 1985. However, the final acceptance of the project works never took place due to Iraq's invasion and occupation of Kuwait. Hasan seeks compensation for five types of contract losses, as set out in the following table:

Table 32. Hasan's claim for contract losses in relation to the Mahaweel Project

Claim element	Claim amount (USD)
Promissory notes	300,352
Performance bond	372,163
Commission and interest	25,417
Final payment	99,820
Retention monies	383,180
Total	1,180,932

493. Hasan seeks compensation in the amount of USD 300,352 for unpaid promissory notes. Hasan asserted that the Ministry issued two promissory notes to the consortium in the amounts of USD 200,235 (payable on 26 October 1989) and USD 100,117 (payable on 9 September 1989), respectively. Hasan contended that the promissory notes were not honoured and the Central Bank of Iraq had promised to pay them in August 1990.

494. Hasan seeks compensation in the amount of USD 372,163 for a performance bond issued in respect of the project, which it alleged that the Ministry failed to release.

495. Hasan seeks compensation in the amount of USD 25,417 paid to the Halk Bank of Turkey for the issue of the performance bond.

496. Hasan seeks compensation in the amount of USD 99,820 relating to the amount stated in the "final certificate". Hasan asserted that the Ministry failed to release the amount.

497. Hasan seeks compensation in the amount of USD 383,180 relating to unpaid retention monies.

2. Analysis and valuation

498. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

499. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Hasan had, in all cases, a contract with Iraq.

(a) Kut Project and Razzaza Project

500. As evidence of its claim for contract losses, Hasan provided work completion certificates for both of the projects. The Panel finds that the work to which the claim for unpaid retention monies relates was performed prior to 2 May 1990.

501. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

(b) Mahaweel Project

502. As evidence of its claim for contract losses, Hasan provided copies of both the promissory notes and a demand letter from the Halk Bank of Turkey relating to commission for the performance bond. Hasan did not provide any other documentation in support of its claim for contract losses. The Panel

notes that Hasan stated all its relevant documents were left behind when it departed from Iraq.

503. The project works were preliminarily accepted in January 1985. However, due to Iraq's invasion and occupation of Kuwait, the final acceptance never took place. The Panel finds that all work under the contract was performed prior to 2 May 1990. The Panel also finds that Hasan failed to provide sufficient evidence to demonstrate that the final acceptance of the project works could not take place due to Iraq's invasion and occupation of Kuwait. The Panel consequently finds that all the contract losses resulting from the alleged failure to issue the final acceptance certificate were not the direct result of Iraq's invasion and occupation of Kuwait.

504. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

505. The Panel recommends no compensation for contract losses.

B. Loss of real property

1. Facts and contentions

506. Hasan seeks compensation in the amount of USD 400,000 for loss of real property. Hasan asserted that its prefabricated buildings, workshop and dormitories were damaged during Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

507. As sole evidence of its claim for real property losses, Hasan provided a copy of an asset register for June 1985, which had been certified by the Turkish embassy in Baghdad. In the article 34 notification, Hasan was requested to provide evidence of the amounts of the real property losses incurred. Hasan was also requested to provide evidence of its ownership of, or other proprietary interest in, the real property at the time the loss or damage occurred. In its reply, Hasan stated that it did not have time to secure documents at the time of Iraq's invasion and occupation of Kuwait as its priority was to leave Iraq as quickly as possible and that it left all its documents in Iraq at the time when it departed.

508. The Panel finds that the 1985 asset register constitutes insufficient evidence of Hasan's title to or right to use the property alleged to have been destroyed and the existence of the property in Iraq as of 2 August 1990.

3. Recommendation

509. The Panel recommends no compensation for loss of real property.

C. Loss of tangible property

1. Facts and contentions

510. Hasan seeks compensation in the amount of USD 132,500 and DEM 218,400 (USD 139,821) (total amount claimed USD 272,321) for loss of tangible property. It asserted that it was not permitted to re-export some of its machinery and equipment, which was "left unattended in our construction sites in Iraq". However, in the Statement of Claim, Hasan stated that the machinery and equipment was kept in Iraq to be used if new work was to be undertaken.

2. Analysis and valuation

511. As evidence of its claim for loss of tangible property, Hasan provided two lists entitled "Fixtures to be Exported from Iraq", which were certified by the Turkish embassy in Baghdad in 1985 and 1986. These lists contain the description of equipment and machinery, the year of purchase of the items, and their value in 1985 and 1986. Hasan also provided purchase invoices relating to certain machinery and equipment.

512. In its reply to the article 34 notification, Hasan narrowed the scope of its claim stating that except for the "prefabricated buildings and their contents", all the other items on the list certified in 1985 were re-exported to Turkey. With respect to the items on the list certified in 1986, Hasan stated that most of the items were re-exported back to Turkey and the remaining items were at the project site "awaiting final acceptance".

513. Hasan also advised that the machinery and equipment were imported into Iraq on a temporary basis. However, it failed to provide customs certificates to the Panel because "no customs certificates [were] on hand therefore no submission [was] possible".

514. The Panel finds that Hasan failed to provide sufficient evidence to demonstrate that the machinery and equipment alleged to have been lost was in Iraq in 1990 or that the alleged loss was suffered due to Iraq's invasion and occupation of Kuwait.

3. Recommendation

515. The Panel recommends no compensation for loss of tangible property.

D. Recommendation for Hasan

Table 33. Recommended compensation for Hasan

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,802,952	nil
Loss of real property	400,000	nil
Loss of tangible property	272,321	nil
Total	2,475,273	nil

516. Based on its findings regarding Hasan's claim, the Panel recommends no compensation.

XIX. KISKA INSAAT TAAHHÜDÜ ISLERI A.S. (KISKA CONSTRUCTION CORPORATION)

517. Kiska Insaat Taahhüdü Isleri A.S. ("Kiska") is a corporation organised according to the laws of Turkey operating in the construction industry. Kiska seeks compensation in the amount of USD 2,920,161 for contract losses.

Table 34. Kiska's claim

Claim element	Claim amount (USD)
Contract losses	2,920,161
Total	2,920,161

A. Contract losses

1. Facts and contentions

518. Kiska seeks compensation in the amount of USD 2,920,161 for contract losses. The losses were allegedly incurred in connection with two contracts relating to projects in Iraq.

519. On 10 July 1981, Kiska entered into a contract with the Ministry of Irrigation and Agriculture, State Organization for Irrigation and Reclamation Projects of Iraq (the "Ministry") for the execution of the Abu Ghraib Irrigation, Drainage and Road Systems Project in Iraq (contract number ISK 2157) (the "Abu Ghraib Project"). The contract price was IQD 24,030,338.

520. On 27 July 1983, Kiska entered into a sub-contract with Al-Sanea, a Kuwaiti construction company, pursuant to which Kiska agreed to perform sub-contracting works on the Muqdadiya-Diyala Irrigation and Drainage Project in Baghdad (the "Drainage Project"). The sub-contract stipulated that Al-Sanea would nominate Kiska as the "nominated sub-contractor". In the Statement of Claim, Kiska stated that it was the nominated sub-contractor of the Ministry of Irrigation and Agriculture of Iraq.

(a) Abu Ghraib Project

521. The project works were completed on 22 February 1985. Kiska asserted that, from the beginning of 1983, the Ministry had difficulty in making payments under the contract. It further asserted that certain payments were made in the form of oil. In 1986, the Central Banks of Turkey and Iraq entered into a deferred payment agreement pursuant to which the Ministry issued 14 promissory notes with a two-year maturity date. Payment was made in United States dollars. Kiska asserted that although payments were delayed, 12 promissory notes were eventually honoured. Kiska seeks compensation in the amount of USD 917,671 relating to the amounts due under

the remaining two promissory notes, which it alleged were not paid due to Iraq's invasion and occupation of Kuwait. The two unpaid promissory notes were issued on 14 March 1988 and 19 September 1988, respectively.

(b) Drainage Project

522. According to the sub-contract, the project works were to be completed within 16 months. Kiska asserted that the project works were carried out between 23 July 1983 and 31 December 1988. Kiska failed to explain the reasons for the delay in the completion of the project works. Kiska further asserted that after the completion of the project works, on 12 February 1989, it reached a "reconciliation" with Al-Sanea, which showed that the amount of USD 2,002,490 was owed to Kiska.

523. Kiska seeks compensation in the amount of USD 2,002,490 for losses allegedly incurred on the Drainage Project. The claim is for unpaid amounts due for work performed (USD 1,252,345) and unpaid retention monies (USD 750,145).

524. Kiska stated that the retention monies remained unpaid because both Al-Sanea and Kiska were not in Iraq when the maintenance period expired. The Panel notes that the sub-contract provided for the release of the retention monies at the commencement of the maintenance period. Under the terms of the sub-contract, Kiska also had to comply with the requirements of the maintenance period provided for in the main contract between Al-Sanea and the Ministry of Irrigation and Agriculture.

2. Analysis and valuation

525. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

526. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), Kiska had, in each case, a contract with Iraq.

(a) Abu Ghraib Project

527. As evidence of its claim for contract losses, Kiska provided a copy of the work completion certificate, which indicates that the project works were completed on 22 February 1985. It also provided copies of the promissory notes and correspondence from the Central Bank of Turkey confirming that the promissory notes remain unpaid. The Panel finds that the work to which the claim for unpaid promissory notes relates, was performed prior to 2 May 1990.

528. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations

of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

529. The Panel finds that for the purpose of Security Council resolution 687 (1991), the deferred payment agreement entered into between the Central Banks of Turkey and Iraq did not have the effect of novating the debts.

(b) Drainage Project

530. As evidence of its claim for contract losses, Kiska provided a copy of the sub-contract with Al-Sanea and the reconciliation dated 12 February 1989.

531. With respect to its claim for unpaid retention monies in the amount of USD 750,145, Kiska failed to provide a copy of the main contract between the Ministry of Irrigation and Agriculture and Al-Sanea, which contained the terms relating to the maintenance period. It also failed to provide information about or evidence of the commencement and the completion dates of the maintenance period. The Panel therefore finds that Kiska failed to provide sufficient evidence to substantiate its claim, and, therefore, how it suffered the alleged loss. The Panel recommends no compensation for unpaid retention monies.

532. With respect to its claim for the remaining amount of USD 1,252,345, the Panel finds that all work under the sub-contract was performed prior to 2 May 1990.

533. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

3. Recommendation

534. The Panel recommends no compensation for contract losses.

B. Recommendation for Kiska

Table 35. Recommended compensation for Kiska

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	2,920,161	nil
Total	2,920,161	nil

535. Based on its findings regarding Kiska's claim, the Panel recommends no compensation.

XX. ZDH ENTERNASYONAL INSAAT TAAHHÜT ORTAKLIGI (ZDH INTERNATIONAL CONSTRUCTION GROUP)

536. ZDH Enternasyonal Insaat Taahhüt Ortakligi ("ZDH") is a corporation organised according to the laws of Turkey operating in the construction industry. ZDH seeks compensation in the amount of DEM 3,668,072 (USD 2,348,317) for contract losses.

Table 36. ZDH's claim

Claim element	Claim amount (USD)
Contract losses	2,348,317
Total	2,348,317

A. Contract losses

1. Facts and contentions

537. ZDH seeks compensation in the amount of DEM 3,668,072 (USD 2,348,317) for contract losses. The losses were allegedly incurred in connection with a contract which it entered into with the Ministry of Irrigation and Agriculture, State Commission for Irrigation and Reclamation Projects, of Iraq (the "Ministry") on 24 December 1979.

538. The contract was for the execution of Abu Ghraib Irrigation, Drainage and Road Systems Projects. The work completion certificate provided by ZDH indicates that the contract price was IQD 25,102,934.

539. ZDH asserted that from 1983 onwards, the Ministry had difficulty in effecting payments under the contract, which eventually led to the signing of a banking agreement between the Central Banks of Iraq and Turkey in 1986. ZDH stated that, pursuant to the terms of this banking agreement, on 27 December 1986, the Ministry issued a promissory note for a total value of DEM 3,668,072 covering the balance remaining owing to ZDH. The promissory note was due for payment on 27 December 1988. ZDH alleged that the promissory note was not honoured due to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

540. The Panel has defined the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991) to limit the jurisdiction of the Commission to exclude debts of Iraq if the performance relating to that obligation took place prior to 2 May 1990.

541. The Panel finds that for the purpose of the "arising prior to" clause of paragraph 16 of Security Council resolution 687 (1991), ZDH had a contract with Iraq.

542. ZDH did not provide a copy of the contract. The work completion certificate indicates that the project works were completed on 27 October 1984 and the maintenance period expired on 27 October 1985. The Panel finds that the work to which the claim for unpaid promissory note relates was performed prior to 2 May 1990.

543. The Panel recommends no compensation for contract losses in respect of work performed prior to 2 May 1990, as they relate to debts and obligations of Iraq arising prior to 2 August 1990 and, therefore, are outside the jurisdiction of the Commission.

544. The Panel finds that for the purpose of Security Council resolution 687 (1991), the banking agreement did not have the effect of novating the debts.

3. Recommendation

545. The Panel recommends no compensation for contract losses.

B. Recommendation for ZDH

Table 37. Recommended compensation for ZDH

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	2,348,317	nil
Total	2,348,317	nil

546. Based on its findings regarding ZDH's claim, the Panel recommends no compensation.

XXI. RECOMMENDATIONS

547. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Walter Bau-Aktiengesellschaft: NIL;

(b) Wayss & Freytag AG: NIL;

(c) Westinghouse-Controlmatic GmbH: NIL;

(d) Wolff & Müller GmbH & Co KG: NIL;

(e) Ansal Properties and Industries Ltd.: NIL;

(f) M/s. Bhandari Builders (Private) Limited: NIL;

(g) M/s. Bhandari Builders (Private) Limited: NIL;

(h) Byucksan Development Co., Ltd.: NIL;

(i) Nam Kwang Engineering & Construction Co., Ltd.: NIL;

(j) Internationale Funderingsgroep bv: USD 1,720,000;

(k) National Construction Company (Pakistan) Limited: NIL;

(l) Mercator - Mednarodna Trgovina, d.d. (Mercator - International Trade, Ltd.): NIL;

(m) NCC International AB: NIL;

(n) Fusas Fuat Soylu Construction and Industry Inc. Co.: USD 400,218;

(o) Hasan Canpoyraz Insaat Müteahhitligi: NIL;

(p) Kiska Insaat Taahhüdü Isleri A.S. (Kiska Construction Corporation): NIL; and

(q, ZDH Enternasyonal Insaat Taahhüt Ortakligi (ZDH International Construction Group): NIL.

Geneva, 12 December 2000

(Signed)	(Signed)	(Signed)
Mr. David Mace Commissioner	Mr. Werner Melis Chairman	Mr. Sompong Sucharitkul Commissioner

Annex IX

Decision concerning the thirteenth instalment of E3 claims taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the thirteenth instalment of "E3" claims, covering 17 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in paragraph 547 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Germany	-	4	122,938,943	nil
India	-	3	157,219,061	nil

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* Previously issued as document S/AC.26/Dec.128 (2001).

1/ The text of the report appears in document S/AC.26/2001/12 (annex VIII above).

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Netherlands	1	-	2,166,705	1,720,000
Pakistan	-	1	45,801,828	nil
Republic of Korea	-	2	54,077,372	nil
Slovenia	-	1	1,681,620	nil
Sweden	-	1	26,589,473	nil
Turkey	1	3	12,147,071	400,218
Total	2	15	422,622,073	2,120,218

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)).

4. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution.

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex X

Report and recommendations made by the Panel of Commissioners concerning the ninth instalment of E4 claims*

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* Previously issued as document S/AC.26/2001/13.

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Introduction

1. At its twenty-fourth session, held on 23-24 June 1997, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Robert R. Briner (Chairman), Alan J. Cleary and Lim Tian Huat as the first Panel of Commissioners (the "Panel") charged with reviewing "E4" claims. The "E4" population consists of claims submitted by Kuwaiti private sector corporations and entities, other than oil sector and environmental claimants, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. A ninth instalment consisting of 21 "E4" claims was submitted to the Panel on 29 February 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the ninth instalment claims.

I. OVERVIEW OF THE NINTH INSTALMENT CLAIMS

4. The ninth instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual, and valuation issues raised by the claims, and the date of filing of the claims with the Commission.

5. The ninth instalment claimants filed losses aggregating Kuwaiti dinars ("KWD") 141,736,561 (approximately United States dollars ("USD") 490,437,927). The claimants also filed claims for interest totalling KWD 9,924,295 (approximately USD 34,340,121) and claim preparation costs aggregating KWD 171,422 (approximately USD 593,156).

6. The claims range between KWD 2,366,482 and KWD 32,527,398 (i.e., between approximately USD 8,188,519 and USD 112,551,550) in value. In view of the complexity of the issues raised, the volume of the documentation underlying the claims and the amount of compensation sought by the claimants, all of the claims in the ninth instalment are classified as "unusually large or complex" within the meaning of article 38(d) of the Rules.

7. The nature of the legal and factual issues raised in each claim and the amount of documentation provided in support of each claim has allowed the Panel to complete its verification of the claims within 12 months of the date on which the ninth instalment claims were submitted to the Panel.

8. All of the claimants in the ninth instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most claimants carried on business operations in the food, agricultural and fisheries industries.

9. The two most common loss types asserted by claimants in this instalment are loss of tangible property (mainly stock, plant equipment and machinery) and loss of earnings or profits. Claimants have also sought compensation for real property, uncollectible receivables, restart costs, interest and claim preparation costs as "other losses".

II. THE PROCEEDINGS

10. Before the ninth instalment claims were submitted to the Panel, the secretariat undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The results of the review were entered into a centralized database maintained by the secretariat (the "Claims Database").

11. Originally three claims presented formal deficiencies and the secretariat issued notifications to these claimants pursuant to article 15 of the Rules. The claimants corrected all formal deficiencies.

12. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

13. The Executive Secretary of the Commission submitted report nos. 28 and 29 dated 23 July 1999 and 28 October 1999, respectively, to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the ninth instalment of "E4" claims and presented the significant legal and factual issues identified in these claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

14. In addition to having access to narrative claim summaries for each claim in the ninth instalment, the Panel also directed the secretariat to request specific information and documents from the claimants pursuant to article 34 of the Rules.

15. At the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents were made available to the Panel:

(a) The claim documents submitted by the claimants;

(b) The preliminary assessment reports prepared under article 14 of the Rules;

(c) Narrative claim summaries and reports;

(d) Further information and documentation provided by the claimants pursuant to specific requests made pursuant to article 34 of the Rules;

(e) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(f) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

16. For the reasons stated in paragraph 17 of the First "E4" Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the ninth instalment in accordance with the verification and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings.

17. During the period from 6 to 15 April 2000, at the direction of the Panel, members of the secretariat and expert accounting and loss adjusting consultants travelled to Kuwait to obtain information for the Panel's assessment of the claimants and to carry out an on-site inspection. This delegation met with all ninth instalment claimants and representatives of the Government of Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC").

18. By its procedural order dated 29 February 2000, the Panel gave notice of its intention to complete its review of the ninth instalment claims and submit its report and recommendations to the Governing Council within 12 months of 29 February 2000. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait.

19. By its second procedural order dated 29 February 2000, the Panel instructed the secretariat to transmit a copy of the original claim files (consisting of the claim form, the statement of claim and all supporting documents) filed by all ninth instalment claimants with claims greater than KWD 30,000,000 (approximately USD 100,000,000) to the Government of Iraq. Only one ninth instalment claim, filed by Kuwait Danish Dairy Company W.L.L., met this criterion. The Panel invited the Government of Iraq to submit its comments within 180 days of the date of the procedural order. Iraq submitted

written comments on this claim, which raised some specific issues, particularly in connection with the claimant's claim for loss of tangible assets. These comments were taken into consideration by the Panel when making its recommendations on compensation for this claim.

20. Pursuant to article 34 of the Rules, additional information and evidence was requested from the claimants in order to assist the Panel in its review of the claims. Claimants who were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. All requests for additional information and evidence were directed through PAAC. These requests were made in relation to the entire "E4" claims population and not just the ninth instalment claims.

21. The requests for additional information and evidence are described in prior "E4" reports, e.g., paragraphs 21-26 of the "Report and recommendations made by the Panel of Commissioners concerning the second instalment of 'E4' claims" (S/AC.26/1999/17) (the "Second 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8) (the "Sixth 'E4' Report"). These requests are not restated in this report.

22. Pursuant to article 34 of the Rules, the secretariat also sought specific clarifications from all claimants in the ninth instalment. The Panel has considered the responses submitted by these claimants.

23. An additional level of verification was performed to determine if related claimants filed duplicate claims with the Commission. This review is described in paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report").

24. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented by the ninth instalment claims had been adequately developed and that oral proceedings were not required to explore such issues further.

III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

25. The legal framework and the verification and valuation methodology applied to the evaluation of the claims in this instalment are the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25-62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead this report refers to sections in the previous "E4" reports where such issues have been addressed.

26. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the reasons therefor are set out in the annexes to this report.

27. Before discussing the Panel's specific recommendations for compensating the ninth instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability always to provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

IV. THE CLAIMS

28. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. With the exception of income-producing property, reclassified losses have been dealt with in the section pertaining to the loss types into which the Panel reclassified the losses.

A. Contract

29. One claimant in this instalment asserted a claim aggregating KWD 273,014 (approximately USD 944,685) for loss of contract. The claim did not raise any new legal or verification and valuation issues. The Panel's approach to the compensability of contract losses is stated in prior "E4" reports and the verification and valuation methodology adopted by the Panel for the loss of contract claims is discussed in paragraphs 77-84 of the First "E4" Report.

30. The Panel's recommendation with respect to the contract loss is set out in annex II.

B. Real property

31. Fifteen claimants in this instalment filed claims aggregating KWD 19,097,804 (approximately USD 66,082,367) for loss of real property. These claims sought compensation for damage to a number of owned and rented premises in Kuwait, including several agricultural buildings and constructions.

32. The claims for loss of real property in this instalment did not raise any new legal or verification and valuation issues. The compensability standards and the verification and valuation methodology adopted by the Panel

for loss of real property claims are stated in paragraphs 89-101 of the First "E4" Report.

33. The nature of damage to the properties and the location of the affected properties in Kuwait established that the losses were a direct result of Iraq's invasion and occupation of Kuwait. In particular, many of the ninth instalment claimants carried out farming operations that were located in areas close to the Kuwaiti borders with Iraq and Saudi Arabia. The extent of the damage to farming operations in these areas is well documented in the report to the Secretary-General by a United Nations Mission, led by former Under-Secretary-General Mr. Abdulrahim A. Farah (the "Farah Report"). Claims were either based on the actual costs incurred in repairing the properties or on estimates of such costs.

34. Most claimants submitted sufficient evidence to establish their interest in the affected properties and the loss claimed. However, as was the case in earlier "E4" instalments, claimants generally did not exclude regular maintenance or depreciation costs from their claims. The Panel adjusted the claims to account for these costs, which would have been incurred in the normal course of business and were not a direct result of Iraq's invasion and occupation of Kuwait. Similar adjustments were made by the Panel in cases of unforced "betterment", as explained in paragraph 97 of the First "E4" Report.

35. In claims based on estimated repair costs, the Panel sought a reasonable explanation for the claimant's failure to repair or replace the affected property. Where such explanation was absent the Panel adjusted the claim to offset the "risk of overstatement" created by this shortcoming.

36. The Panel's recommendations on real property losses are summarized in annex II.

C. Tangible property, stock, cash and vehicles

37. Tangible property losses are claimed by a majority of the ninth instalment claimants. The claimed losses, relating to industrial plant and machinery, stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 79,449,119 (approximately USD 274,910,446). One claimant, United Fisheries, has claimed for loss and damage to its fleet of 15 fishing vessels.

38. When determining the compensability and the verification and valuation of these tangible property claims, the Panel applied the approach set out in paragraphs 108-135 of the First "E4" Report. For claims for the repair or replacement costs of tangible assets, the Panel reviewed the claims to verify whether adjustments were made by the claimant to reflect, inter alia, applicable depreciation (see paragraph 113 of the First "E4" Report). In the case of Kuwait Danish Dairy Co. W.L.L., the Panel determined that the

applicable depreciation was not applied by the claimant and the tangible asset claim was adjusted accordingly.

39. With regard to claims for loss of stock, a number of claimants have raised claims for livestock that was lost as a direct result of Iraq's invasion and occupation of Kuwait. Such claims for loss of livestock commonly have two elements, those for productive livestock and those for livestock held for slaughter. The former consists of livestock held by the claimant to produce goods such as other livestock (lambs, calves etc.), or products such as milk or eggs. Livestock held for slaughter represents the product itself.

40. It is the Panel's view that the verification and valuation of these two types of stock cannot be carried out in the same manner. A similar view was also taken by the D2 Panel in the Report and Recommendations made by the Panel of Commissioners Concerning the Sixth Instalment of Individual Claims for Damages Above USD 100,000 (S/AC.26/2000/24). (See paragraph 107, p. 24.)

41. For the verification and valuation of livestock held for slaughter, the Panel treats this as a current asset and reviews the basis of valuation of such livestock for reasonableness (i.e., valuation at the lower of the original cost or net realisable value). (See paragraphs 117-126 of the First "E4" Report.)

42. For the verification and valuation of productive livestock such as egg-laying poultry, the Panel considers that this livestock is more in the nature of a fixed asset and therefore the cost of the asset should be amortized over its useful life.

43. The Panel considered information provided by claimants during the on-site inspection as to the productive life of such poultry and values it based on the cost of raising the poultry to the age at which it commences production, such costs to be amortized over its useful productive life. The Panel then sought to confirm that the valuation policy of the claimant as stated in the claimant's audited accounts complied with this approach. In view of the nature of the evidence provided by the claimants, (most claimants provided audited accounts for the three years immediately prior to Iraq's invasion and occupation of Kuwait), the Panel was able to make such a confirmation for the majority of claimants. However, where the evidence submitted by the claimant did not allow the Panel to confirm that the claimant's valuation policy for productive poultry complied with this approach, this shortcoming was regarded as creating a "risk of overstatement", and the Panel adjusted the claim to offset such risk of overstatement.

44. The claimants in this instalment generally submitted the same type of evidence encountered by the Panel in earlier "E4" instalments in relation to

claims for loss of tangible property. (See the Second "E4" Report, paragraphs 55-56.)

45. For most claimants the existence, ownership and value of stocks lost were supported by copies of their audited accounts, original inventory purchase invoices and "roll-forward" calculations, as defined in paragraph 119 of the First "E4" Report. A few claimants sought to rely mainly on employee or related party witness statements to establish the fact of loss of stock. Where the fact of loss of stock was not supported by sufficient evidence, such as extraordinary losses in the claimant's audited post-liberation accounts, the Panel has recommended no compensation for such losses.

46. As was the case in prior instalments of "E4" claims, claims for loss of goods in transit related to goods that were in Kuwait on the day of Iraq's invasion and that were subsequently lost. Successful claimants were able to submit sufficient proof of payment for the goods and establish the ownership, existence and loss of the goods from certificates issued by the Kuwaiti port authorities or shipping agents.

47. A majority of the claimants seeking compensation for cash losses sought to rely on witness statements from related parties without providing further evidence to substantiate their claims. Where claims for cash losses were not supported by sufficient contemporaneous evidence, establishing the possession and amount of cash held on 2 August 1990, the Panel has recommended no compensation.

48. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and circumstances of their losses. Two ninth instalment claimants claimed for loss of vehicles that were used in their farming operations. These claimants were unable to provide deregistration certificates as the farm vehicles were not required to be registered by the Kuwait Traffic Department. The Panel held that where the claimants could establish their ownership of the lost vehicles and the fact of loss with alternative evidence, such as the existence of an extraordinary loss in respect of the vehicles being recorded in the claimant's post-liberation accounts, compensation would be awarded for such losses.

49. The Panel's recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II.

D. Income-producing property

50. One ninth instalment claimant, Kuwait Pharmaceutical Industries Company S.A.K. seeks compensation for loss of income-producing property consisting of

the estimated value of its business that allegedly had to be liquidated as a result of Iraq's invasion and occupation of Kuwait. Upon reviewing the nature of the claim, and for the reasons set out below, the Panel determined that the loss should be reclassified into other categories, including loss of profits, loss of real property and loss of tangible property.

51. The claim was valued by the claimant using the discounted cash flow (DCF) method, allegedly in accordance with Governing Council decision 9 (S/AC.26/1992/9). Except for liquidation and claim preparation costs, no other losses are being claimed, although the claimant's audited accounts for the two-year period ending December 1992 show extraordinary losses due to Iraq's invasion and occupation of Kuwait of KWD 8,511,439.

52. The DCF method of valuation is described at paragraph 18 of Governing Council decision 9:

> "For the valuation of income-producing properties there are several alternative concepts. One is to measure by reference to costs, which leads to the determination of book value. Another is to determine the value of the property as a going concern. This is often done by reference to the market value of similar properties. Where such market value cannot be ascertained, the economic or current value of that asset can be ascertained by the discounted cash flow (DCF) method or by the price/earnings (P/E) method. The DCF method calculates the value at one specified time of cash flows that are to be received at a different time by discounting the yearly net cash flows to present value, with the discount rate including cost of capital and risk components . . ."

53. In considering whether the valuation method used by the claimant in computing the loss is the correct method, in accordance with the valuation methods prescribed under Governing Council decision 9, the Panel has considered the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of 'E1' Claims", (S/AC.26/1999/10) ("the Second 'E1' Report").

54. At paragraph 435 of the Second "E1" Report, the "E1" Panel found that the DCF method of valuing business losses, as described at paragraph 52 above, was mentioned only as one of several methods that the Panel may employ in valuing business losses and that it was ultimately the Panel's choice as to which method most accurately values a claimant's loss. The "E1" Panel also found that the Governing Council has placed a limitation on the scope of compensable losses. The "E1" Panel stated that:

> "At the outset, the Panel finds that the Governing Council has placed a limitation on the scope of compensable losses. The Governing Council states, in paragraph 17 of decision 9, that

> > "In the event that the business has been rebuilt and resumed, ... compensation may only be claimed for the loss suffered during the relevant period.'"
>
> The Governing Council does not explicitly define the term 'relevant period', but in the context in which it is used, it appears to the Panel that the Governing Council intended that the relevant period be defined as the period between the date of impairment of the business and the date on which the business was or could have been rebuilt and resumed operations at pre-invasion levels. In so doing, the Governing Council has placed an implicit limit on the scope of consequential losses that are compensable before the Commission, and the Panel must pay due regard to this limitation.
>
> Based on this interpretation, the Panel concludes that where an income-producing property, i.e., an asset or a group of assets, such as a business, has been completely destroyed or irreparably damaged, the DCF method can be used to estimate the cash flows through the end of the property's expected economic life in order to value that property. Where the asset or business can be repaired or resumed, however, the DCF method will not be an appropriate measure of loss to the extent that it takes into account estimated losses beyond the restoration date of the asset or business." (paragraphs 437-439)

55. The Panel also notes that a liquidator was appointed over the claimant in May 1992, following an extraordinary general meeting of the claimant's shareholders, at which a majority voted in favour of the claimant's liquidation. The claimant alleges in its statement of claim to have sustained extensive damage as a result of Iraq's invasion and occupation of Kuwait, which left it with the difficult choice of liquidating the company or restarting operations. The claimant states that 54 per cent of the shareholders of the claimant who were present at the extraordinary general meeting in May 1992 voted in favour of the liquidation of the company. Specific reasons as to why this decision was taken and why the claimant was unable to restart operations were not given. However, no evidence was submitted by the claimant to show that the business was completely destroyed or irreparably damaged.

56. The Panel agrees with the conclusions reached by the "E1" Panel at paragraphs 437-439 of the Second "E1" Report, and in the circumstances, finds that the DCF method is not the appropriate measure for calculating the claimant's losses in this instance. The Panel finds that the amounts recorded in the provision in the claimant's post-liberation accounts for extraordinary losses arising as a result of Iraq's invasion and occupation of Kuwait forms a more appropriate basis for accurately measuring the claimant's losses. The Panel has therefore reclassified the amount claimed as loss of income-producing property into other loss categories in accordance with the amounts recorded in the claimant's post-liberation accounts and has dealt

with such reclassified losses in the section pertaining to the loss category into which the Panel reclassified the losses.

E. Payment or relief to others

57. Five claimants in this instalment submitted claims in the amount of KWD 712,662 (approximately USD 2,465,958) for payment or relief to others.

58. The claims did not raise any new legal or verification and valuation issues. When reviewing the claims for payment or relief to others, the Panel applied the approach and verification and valuation methodology described in earlier "E4" reports. (See, for example, the Second "E4" Report, paragraphs 70-74.)

59. The Panel's recommendation on the payment or relief to others claim is summarized in annex II.

F. Loss of profits

60. Seventeen claimants in this instalment submitted claims for loss of profits aggregating KWD 38,842,668 (approximately USD 134,403,696).

61. Four significant legal and factual issues raised in the first instalment claims were all raised in the claims in this instalment. These relate to the impact and assessment of (i) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (ii) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (iii) the indemnity period for loss of profits claims, and (iv) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in this instalment.

62. One claimant, United Fisheries of Kuwait, claimed for loss of profits in connection with its fishing operations. The claimant stated that it was unable to recommence its fishing operations until it had replaced its fishing vessels, all of which were damaged or destroyed during Iraq's invasion and occupation of Kuwait. The claimant also stated that whilst it recommenced its fishing operations in October 1992, its profitability declined generally after the liberation of Kuwait, and on this basis it sought to extend the period of the compensability of its loss of profits claim to 31 December 1993.

63. The standard applied by the Panel in determining the appropriate period of time for which a claim for loss of profits is a direct loss resulting from Iraq's invasion and occupation of Kuwait, is to allow compensation for the

period until the claimant could have recommenced operations at pre-invasion capacity (and not necessarily the period within which the claimant could have achieved pre-invasion levels of profitability). (See paragraphs 182-187 of the First "E4" Report".)

64. The Panel finds that the earliest time that the claimant could have resumed trading at pre-invasion capacity was at the start of the 1992 fishing season, which was in September 1992. The Panel therefore awards compensation to the claimant for loss of profits for a period of 25 months.

65. Despite several requests, some claimants in the ninth instalment did not provide annual accounts for the three financial years preceding and following the period of Iraq's invasion and occupation of Kuwait. The Panel noted that in some cases the failure to submit some accounts was sufficiently explained; for example, where the claimant had commenced trading in the period between 1987 and 1990 or where the claimant had ceased trading following Iraq's invasion and occupation of Kuwait.

66. Loss of profits claims by businesses that failed to provide a full set of annual audited accounts for the relevant periods were regarded as presenting a "risk of overstatement", unless the failure to submit the accounts was sufficiently explained.

67. The verification and valuation methodology adopted by the Panel for loss of profits claims is stated in paragraphs 194-202 of the First "E4" Report.

68. The Panel's recommendations on loss of profits claims are summarized in annex II.

G. Receivables

69. Seven claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating KWD 1,290,633(approximately USD 4,465,858). All of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

70. As was the case in previous instalments of "E4" claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The Panel reiterates its determination on this matter as set out in paragraphs 209-210 of the First "E4" Report. Claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

71. The ninth instalment claims for uncollectible receivables were verified and valued in the manner described in paragraphs 211-215 of the First "E4" Report.

72. As discussed above, the Panel has recommended no compensation for claims that relied on the mere assertion that uncollected debts were ipso facto uncollectible because the debtors did not return to Kuwait. Most of the claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants, in the context of the additional information requested from claimants (see paragraph 14 above). While a number of responses were received from claimants, six claimants did not satisfy the above criteria.

73. The Panel's recommendations on claims for receivables are summarized in annex II.

H. Restart costs

74. Nine claimants in this instalment asserted claims aggregating KWD 1,285,467(approximately USD 4,447,983) for restart costs. The amounts claimed as restart costs have been reviewed using the methodology described in paragraphs 221-223 of the First "E4" Report and paragraphs 93-96 of the Second "E4" Report.

75. One claimant, Kuwait Supply Company, seeks compensation for incremental costs incurred in connection with the shipment of goods that arrived in Kuwait on 31 July 1990. Discharge of the goods commenced on 31 July 1990, but was subsequently halted on 2 August 1990. Discharge of the goods recommenced on 11 August 1990 and was completed on 1 September 1990. The claimant claimed in respect of demurrage charges and other costs incurred in connection with the delay in discharging the cargo, which it was ordered to pay to the shipping company following arbitration proceedings.

76. The claimant was ordered to pay the shipping company for sums in respect of demurrage on loading, demurrage on discharge and the balance of freight charges of 10 per cent due to the shipping company. The balance of freight charges represent the retention of 10 per cent by the claimant of the cost of shipping the goods. The claimant was also awarded damages in respect of a counterclaim brought by it against the shipping company in respect of short loading and the claimant gives credit for this amount in its claim.

77. The Panel finds that the amounts claimed for demurrage on loading and the payment of balance of freight charges were liabilities accruing to the claimant at the time the goods were loaded on the vessel on 23 July 1990, and hence these costs did not arise as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the costs for demurrage on

discharge arose as a direct result of Iraq's invasion and occupation of Kuwait, which caused the delay in discharging the cargo upon its arrival in Kuwait. The Panel notes that the claimant filed evidence showing that it was given leave to appeal from two parts of the arbitration award made against it, namely the demurrage on discharge and balance of freight charges. However, the claimant has failed to provide evidence as to whether such an appeal was pursued and this shortcoming is regarded as creating a "risk of overstatement". As a result, the Panel adjusted the claim to offset such "risk of overstatement".

78. The Panel's recommendations on restart costs are summarized in annex II.

I. Other losses

79. Five claimants in this instalment asserted claims aggregating KWD 785,194 (approximately USD 2,716,934) for other losses.

80. Claims for "other losses" that have been dealt with in prior "E4" instalments were reviewed in the manner stated in earlier "E4" reports. (See, for example, paragraph 108 of the Second "E4" Report, dealing with the treatment of prepaid expenses.)

81. One claimant, Kuwait Pharmaceuticals Industries Company S.A.K., raised a claim for the costs incurred in connection with the liquidation of the company. The background to the appointment of a liquidator is discussed at paragraph 52 above. The Panel considered whether the costs associated with the liquidation are losses directly caused by Iraq's invasion and occupation of Kuwait. In reaching its decision, the Panel took into account the fact that the liquidator was appointed by a majority of the shareholders of the claimant company (54 per cent of those present at the extraordinary general meeting at which the appointment of the liquidator was approved voted in favour of liquidation), and therefore the liquidation was in the nature of a voluntary liquidation as opposed to a compulsory liquidation by creditors of the claimant company. The Panel also reiterates its findings at paragraph 55 above that the claimant did not produce any evidence to show that the business was completely destroyed or irreparably damaged as a result of Iraq's invasion and occupation of Kuwait.

82. In the circumstances, the Panel does not find the requisite causal link to exist between Iraq's invasion and occupation of Kuwait and the liquidation of the claimant company. The Panel finds that while Iraq's invasion and occupation of Kuwait may have been a factor in the shareholders' majority decision to appoint a liquidator, it was ultimately an independent business decision by the claimant company shareholders to proceed with a liquidation. The Panel therefore recommends that no compensation be awarded.

83. The Panel's recommendations on other losses are summarized in annex II.

V. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

84. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226-233 of the First "E4" Report.

B. Claim preparation costs

85. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

VI. RECOMMENDED AWARDS

86. Based on the foregoing, the awards recommended by the Panel for claimants in the ninth instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest KWD and therefore the amounts may vary from the amount stated on Form E by one KWD.

Geneva, 21 December 2000

(Signed) Robert R. Briner
Chairman

(Signed) Alan J. Cleary
Commissioner

(Signed) Lim Tian Huat
Commissioner

Annex I

Recommended awards for the ninth instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ claim No. a/	UNCC claim No.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD) b/	Amount recommended (KWD)	Amount recommended (USD)
E 00346	4003467	Kuwait Flour Mills & Bakeries Company S.A.K.	15,953,876	15,943,876	8,401,966	29,064,613
E 00898	4004016	Gulf Paper Manufacturing Company K.S.C.	3,110,235	2,525,437	1,599,373	5,534,163
E 00919	4004035	Kuwait Supply Company	10,332,203	10,328,077	5,509,101	19,061,945
E 01087	4004182	United Fisheries of Kuwait K.S.C.	12,714,861	12,700,558	5,232,960	18,068,351
E 01113	4004220	Gulf Supply Co. Ltd.	3,232,710	2,907,400	2,036,913	7,048,142
E 01142	4004250	Kuwait Food Company (Americana) S.A.K.	9,272,768	8,222,436	4,697,440	16,254,118
E 01149	4004257	Agricultural Food Products Co. K.S.C.	4,174,911	3,322,619	1,068,914	3,698,664
E 01287	4004416	Kuwait United Poultry Co. K.S.C.	4,722,208	4,716,208	3,768,000	13,027,893
E 01321	4004400	Kuwait Pharmaceuticals Industries Company S.A.K.	7,634,523	7,629,523	4,293,979	14,853,109
E 01325	4004404	Mubarakiah Poultry and Feed Company (K.S.C.) Closed	11,839,430	10,579,889	5,708,952	19,754,159
E 01339	4004446	Meat and Foodstuffs/Abdalatif Abdulla Al Mehri and Partners Co. W.L.L.	3,114,698	2,600,552	1,274,943	4,411,567
E 01451	4004572	Kuwait Dairy Company K.S.C. (Closed)	4,573,382	4,556,882	2,288,423	7,913,274
E 01553	4004651	Refreshment Trading Co. W.L.L.	3,009,293	3,002,670	1,767,035	6,114,308
E 01673	4004766	Salhiya Poultry Company	3,550,193	3,538,193	2,306,521	7,981,042
E 01735	4004843	The Kuwaiti Danish Dairy Company W.L.L.	32,527,398	28,622,494	8,332,659	28,832,730
E 01744	4004852	Green Gardens Company, W.L.L.	4,994,924	4,334,125	160,356	554,865
E 01759	4004867	Live Stock Transport & Trading Co.	3,781,580	3,353,198	1,719,437	5,949,609
E 01768	4004876	Naif Poultry Co. W.L.L.	3,328,369	3,061,445	1,506,804	5,212,287
E 01829	4004902	Kuwait Catering Company	3,364,437	3,198,700	732,405	2,534,273
E 02042	4005182	International Meat and Foodstuff Company	4,233,797	4,230,797	2,248,409	7,776,233
E 02283	4005391	Al Gharabally International Group Co. W.L.L.	2,366,482	2,361,482	1,491,411	5,159,630
TOTAL			151,832,278	141,736,561	66,146,001	228,804,975

a/ The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

b/ The "Net amount claimed" is the original amount claimed less the amounts claimed for claim preparation costs and interest. As set forth in paragraphs 74 and 75 of the report, the Panel has made no recommendation with regard to these items.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Flour Mills & Bakeries Company S.A.K.
UNCC claim number:	4003467
UNSEQ number:	E 00346

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	5,929,959	3,956,981	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for failure to repair/replace, depreciation and maintenance. See paragraphs 37 49 of the report.
Loss of stock	6,937,243	3,672,209	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	47,627	47,627	Claim awarded in full. See paragraph 48 of the report.
Loss of profits	3,029,047	725,149	Claim adjusted to reflect historical results. See paragraphs 60 68 of the report.
TOTAL	15,943,876	8,401,966	

Claim preparation costs	10,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

laimant's name: Gulf Paper Manufacturing Company K.S.C.
NCC claim number: 4004016
NSEQ number: E 00898

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
oss of real property	234,938	168,924	Claim adjusted for maintenance, failure to repair/replace and to reflect incremental cost. See paragraphs 31-36 of the report.
oss of tangible operty	477,968	286,865	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of bad debts. Claim adjusted for depreciation, maintenance and to reflect incremental cost. See paragraphs 37-49 of the report.
oss of stock	1,616,182	1,121,909	Claim adjusted for stock build up, obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
oss of cash	18,563	0	Insufficient evidence to substantiate claim. See paragraph 47 of the report.
oss of vehicles	7,823	5,051	Claim adjusted to reflect M.V.V. Table values and for maintenance. See paragraph 48 of the report.
ad debts	169,963	16,624	Claim adjusted for evidentiary shortcomings. See paragraphs 69-73 of the report.
OTAL	2,525,437	1,599,373	

laim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
nterest	579,798	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Supply Company
UNCC claim number: 4004035
UNSEQ number: E 00919

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	4,680	4,680	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim awarded in full. See paragraphs 37-49 of the report.
Loss of stock	9,512,054	5,196,943	Claim adjusted for stock build up, obsolescence and for evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	18,191	15,587	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	704,747	258,900	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
Restart costs	88,405	32,991	Claim adjusted for maintenance. Claim for demurrage costs adjusted. See paragraphs 74-78 of the report.
TOTAL	10,328,077	5,509,101	

Claim preparation costs	4,126	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: United Fisheries of Kuwait K.S.C.
UNCC claim number: 4004182
UNSEQ number: E 01087

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	114,062	61,825	Claim adjusted for depreciation and to reflect incremental amount. See paragraphs 31-36 of the report.
Loss of tangible property	2,091,591	1,531,529	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation, failure to repair/replace, maintenance and evidentiary shortcomings. See paragraphs 37-49 of the report.
Loss of stock	1,242,793	680,696	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	27,150	26,774	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	9,098,246	2,902,871	Original loss of contracts claim reclassified as loss of profits, other loss not categorised, restart costs and loss of stock. Claim adjusted to reflect historical results. See paragraphs 62-64 of the report.
Restart costs	92,677	24,165	Claim adjusted to reflect incremental amount. See paragraphs 74-78 of the report.
Other loss not categorised	34,039	5,100	Original other loss not categorised claim reclassified as restart costs, loss of profits, loss of tangible property and claim preparation costs. Claim adjusted to reflect incremental amount. See paragraphs 79-81 of the report.
TOTAL	12,700,558	5,232,960	

Claim preparation costs	14,303	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Gulf Supply Co. Ltd
UNCC claim number:	4004220
UNSEQ number:	E-01113

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	17,387	17,387	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim awarded in full. See paragraphs 17-49 of the report.
Loss of stock	2,815,921	1,968,014	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	39,150	36,356	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Payment or relief to others	34,942	15,156	Claim adjusted for evidentiary shortcomings. See paragraphs 57-59 of the report.
TOTAL	2,907,400	2,036,913	

Claim preparation costs	4,500	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	320,810	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Food Company (Americana) S.A.K.
UNCC claim number:	4004250
UNSEQ number:	E-01142

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	273,014	131,000	Claim adjusted for evidentiary shortcomings. See paragraphs 29-30 of the report.
Loss of tangible property	2,107,343	1,323,714	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 37-49 of the report.
Loss of stock	3,170,030	1,818,290	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	157,615	150,365	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	2,329,516	1,237,755	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
Restart costs	45,395	36,316	Claim adjusted for maintenance. See paragraphs 74-78 of the report.
Other loss not categorised	139,523	0	Claim for pre-paid rent adjusted per paragraph 80 of the report. Insufficient evidence to substantiate claim for key money. See paragraphs 79-83 of the report.
TOTAL	8,222,436	4,697,440	

Claim preparation costs	9,100	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	1,041,232	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Agricultural Food Products Co. K.S.C.
UNCC claim number:	4004257
UNSEQ number:	E-01149

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	721,986	256,599	Claim adjusted for depreciation and failure to repair/replace. See paragraphs 31-36 of the report.
Loss of tangible property	831,134	207,967	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash, loss of vehicles and loss of profits. Claim adjusted for depreciation, failure to repair/replace, maintenance, evidentiary shortcomings and to reflect the net book value. See paragraphs 37-49 of the report.
Loss of stock	560,499	256,912	Claim adjusted for stock build up, obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of cash	12,217	12,217	Claim awarded in full. See paragraph 47 of the report.
Loss of vehicles	302,420	48,526	Claim adjusted for maintenance and evidentiary shortcomings. See paragraph 48 of the report.
Loss of profits	379,924	0	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
Bad debts	138,080	0	Original claim for loss of business transaction claim reclassified as loss of bad debts. Insufficient evidence to substantiate claim. See paragraphs 69-71 of the report.
Restart costs	28,377	0	Original other loss not categorised claim reclassified as other loss not categorised and restart costs. Claim adjusted to incremental amount. See paragraphs 74-78 of the report.
Other loss not categorised	345,982	286,693	Claim for pre paid rent adjusted per paragraph 80 of the Report. Claim for cancelled Kuwaiti Dinar recommended in full. See paragraphs 79-83 of the report.
TOTAL	3,322,619	1,068,914	

Claim preparation costs	21,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	829,292	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait United Poultry Co. K.S.C.
UNCC claim number:	4004416
UNSEQ number:	E-01287

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	819,024	819,024	Claim awarded in full. See paragraphs 31-36 of the report.
Loss of tangible property	573,802	573,802	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim awarded in full. See paragraphs 37-49 of the report.
Loss of stock	1,750,335	1,353,584	Claim adjusted for stock build up, obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	167,358	92,070	Claim adjusted to reflect M.V.V. Table values, for evidentiary shortcomings and to reflect the net book value. See paragraph 48 of the report.
Loss of profits	1,405,689	929,520	Claim adjusted to reflect historical results and to restrict the period of loss to 10 months. See paragraphs 60-68 of the report.
TOTAL	4,716,208	3,768,000	

Claim preparation costs	6,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Pharmaceuticals Industries Company S.A.K.
UNCC claim number:	4004400
UNSEQ number:	E 01321

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	1,535,093	860,000	Original loss of income producing property claim reclassified as loss of real property, loss of tangible property, loss of stock, loss of vehicles, loss of profits and restart costs. Claim adjusted for depreciation. See paragraphs 31-36 of the report.
Loss of tangible property	2,304,622	1,152,311	Claim adjusted for depreciation. See paragraphs 37-49 of the report.
Loss of stock	2,458,374	1,829,209	Claim adjusted for stock build-up and obsolescence. See paragraphs 39-45 of the report.
Loss of vehicles	6,466	0	Insufficient evidence to substantiate claim. See paragraph 48 of the report.
Loss of profits	1,118,512	452,459	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
Restart costs	149,456	0	Insufficient evidence to substantiate claim. See paragraphs 74-78 of the report.
Other loss not categorised	57,000	0	Insufficient evidence to substantiate claim. Claim for liquidation costs adjusted per paragraphs 79-83 of the report.
TOTAL	7,629,523	4,293,979	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Mubarakiah Poultry and Feed Company (K.S.C.) (Closed)
UNCC claim number:	4004404
UNSEQ number:	E-01325

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	7,283,309	4,659,259	Claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 31-36 of the report.
Loss of tangible property	60,492	27,069	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 37-49 of the report.
Loss of stock	2,142,754	869,095	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. Insufficient evidence to substantiate claim for loss of stock at third party premises. See paragraphs 39-45 of the report.
Loss of cash	9,802	9,102	Claim adjusted for evidentiary shortcomings. See paragraph 47 of the report.
Loss of vehicles	95,757	80,572	Claim adjusted for evidentiary shortcomings and maintenance. See paragraph 48 of the report.
Payment or relief to others	96,755	30,873	Claim adjusted for evidentiary shortcomings. See paragraphs 57-59 of the report.
Loss of profits	503,510	0	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
Bad debts	178,860	0	Insufficient evidence to substantiate claim. See paragraphs 69-73 of the report.
Other loss not categorised	208,650	32,982	Original loss not categorised claim reclassified as loss of profits, loss of bad debts and payment or relief to others. Claim for Iraqi Dinars adjusted to reflect approved exchange rate. Claim for Kuwaiti Dinars awarded in full. Insufficient evidence to substantiate claim for loss of rent. Insufficient evidence to substantiate claim for loss of key money. See paragraphs 79-83 of the report.
TOTAL	10,579,889	5,708,952	

Claim preparation costs	10,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	1,249,541	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Meat and Foodstuffs/Abdalatif Abdulla Al Mehri and Partners Co. W.L.L.
UNCC claim number:	4004446
UNSEQ number:	E-01339

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	2,199,702	1,079,690	Original loss of real property claim reclassified as loss of tangible property. Claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings. See paragraphs 31-36 of the report.
Loss of tangible property	149,210	83,640	Claim for vehicles adjusted for evidentiary shortcomings and maintenance. Claim for tanning and cutting machines adjusted for depreciation and failure to repair/replace. See paragraphs 37-49 of the report.
Loss of stock	134,628	111,613	Claim adjusted for obsolescence. See paragraphs 39-45 of the report.
Loss of cash	4,151	0	Insufficient evidence to substantiate claim. See paragraph 47 of the report.
Bad debts	112,861	0	Insufficient evidence to substantiate claim. See paragraphs 69-73 of the report.
TOTAL	2,600,552	1,274,943	

Claim preparation costs	1,500	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	512,646	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Dairy Company K.S.C. (Closed)
UNCC claim number:	4004572
UNSEQ number:	E-01451

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	141,101	108,172	Claim for destroyed buildings adjusted for depreciation and failure to repair/replace. Claim for repair expenses for building adjusted for maintenance. See paragraphs 31-36 of the report.
Loss of tangible property	237,690	233,531	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation. See paragraphs 37-49 of the report.
Loss of stock	2,023,704	1,068,197	Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39-45 of the report.
Loss of vehicles	439,639	308,002	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	1,361,173	470,200	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
Bad debts	102,773	0	Insufficient evidence to substantiate claim. See paragraphs 69-73 of the report.
Restart costs	250,802	100,321	Claim adjusted for evidentiary shortcomings and to reflect incremental amount. See paragraphs 74-78 of the report.
TOTAL	4,556,882	2,288,423	

Claim preparation costs	16,500	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Refreshment Trading Co. W.L.L.
UNCC claim number:	4004651
UNSEQ number:	E 01553

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	2,178,659	1,410,362	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace. See paragraphs 17-49 of the report.
Loss of stock	744,026	335,811	Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39-45 of the report.
Loss of vehicles	77,600	20,862	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraph 48 of the report.
Bad debts	52,385	0	Insufficient evidence to substantiate claim. See paragraphs 69-73 of the report.
TOTAL	3,002,670	1,767,035	

Claim preparation costs	6,623	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Salhiya Poultry Company
UNCC claim number:	4004766
UNSEQ number:	E 01673

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	1,064,542	794,915	Claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 31-36 of the report.
Loss of tangible property	927,553	815,461	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation. See paragraphs 37-49 of the report.
Loss of stock	1,288,646	569,697	Claim for adjusted for stock build up, obsolescence and evidentiary shortcomings. See paragraphs 39 45 of the report.
Loss of vehicles	80,500	45,834	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	176,952	80,614	Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 60-68 of the report.
TOTAL	3,538,193	2,306,521	

Claim preparation costs	12,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The Kuwaiti Danish Dairy Company W.L.L.
UNCC claim number: 4004843
UNSEQ number: E-01735

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	1,644,079	1,162,244	Claim adjusted for maintenance and depreciation. See paragraphs 31-36 of the report.
Loss of tangible property	11,332,397	2,702,193	Original tangible property claim reclassified as loss of tangible property, loss of stock, loss of vehicles, restart costs and claim preparation costs. Claim adjusted for maintenance, depreciation, failure to repair/replace and evidentiary shortcomings. See paragraphs 37-49 of the report.
Loss of stock	3,167,217	758,482	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	876,822	118,880	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	10,844,783	3,438,603	Original loss due to restart costs and other loss not categorised claims reclassified as loss of profits. Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
Bad debts	535,711	0	Insufficient evidence to substantiate claim. See paragraphs 69-73 of the report.
Restart costs	221,485	152,257	Original claim preparation costs claim reclassified as claim preparation costs and restart costs. Claim adjusted for evidentiary shortcomings and to reflect incremental amount. See paragraphs 74-78 of the report.
TOTAL	28,622,494	8,332,659	

Claim preparation costs	7,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	3,897,904	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Green Gardens Company, W.L.L.
UNCC claim number: 4004852
UNSEQ number: E-01744

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	482,260	111,536	Claim for property destroyed adjusted for evidentiary shortcomings and failure to repair/replace. Claim for repairs to property adjusted for depreciation. See paragraphs 31-36 of the report.
Loss of tangible property	143,709	34,194	Original loss of tangible property claim reclassfied as loss of tangible property, loss of stock, loss of vehicles and loss of profits. Claim adjusted for failure to repair/replace, depreciation and maintenance. See paragraphs 37-49 of the report.
Loss of stock	162,457	14,133	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	1,485	493	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	3,544,214	0	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
TOTAL	4,334,125	160,356	

Claim preparation costs	3,500	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	657,299	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Live Stock Transport & Trading Co.
UNCC claim number: 4004867
UNSEQ number: E-01759

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	212,968	103,962	Repairs to the meat factory and the casing/guts factory adjusted for maintenance. Repairs to the farm buildings adjusted for evidentiary shortcomings and depreciation. See paragraphs 31-36 of the report.
Loss of tangible property	88,419	49,968	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Recommend awarding claim for equipment and tools, furniture, refrigerators and air conditioners in full. Agriculture equipment, machinery and fixtures adjusted for evidentiary shortcomings and depreciation. See paragraphs 37-49 of the report.
Loss of stock	1,373,271	1,083,511	Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 39-45 of the report.
Loss of cash	25,417	20,764	Claim adjusted to reflect historical results. Cash deposited at Kuwait Finance House awarded in full. Claim for cash lost from safe adjusted per paragraph 47 of the report.
Loss of vehicles	55,621	46,048	Claim adjusted to reflect M.V.V. Table values and for maintenance. See paragraph 48 of the report.
Payment or relief to others	246,227	156,706	Claim adjusted for evidentiary shortcomings. See paragraphs 57-59 of the report.
Loss of profits	1,344,685	251,888	A portion of other loss not categorised and payment or relief to others reclassified as loss of profits. Claim adjusted to reflect historical results and for windfall profits. See paragraphs 60-68 of the report.
Restart costs	6,590	6,590	Claim awarded in full. See paragraphs 74-78 of the report.
TOTAL	3,353,198	1,719,437	

Claim preparation costs	10,270	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	418,112	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Naif Poultry Co. W.L.L.
UNCC claim number:	4004876
UNSEQ number:	E-01768

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	1,943,832	566,033	Claim adjusted for depreciation, evidentiary shortcomings and to reflect net book value. See paragraphs 31-36 of the report.
Loss of tangible property	263,549	220,992	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation, evidentiary shortcomings and maintenance. See paragraphs 37-49 of the report.
Loss of stock	582,286	461,527	Claim adjusted for obsolescence, evidentiary shortcomings and depreciation. See paragraphs 39-45 of the report.
Loss of vehicles	63,475	50,209	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraph 48 of the report.
Payment or relief to others	64,971	64,711	Claim adjusted for evidentiary shortcomings. See paragraphs 57-59 of the report.
Loss of profits	143,332	143,332	Claim awarded in full. See paragraphs 60-68 of the report.
TOTAL	3,061,445	1,506,804	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	261,924	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Kuwait Catering Company
UNCC claim number:	4004902
UNSEQ number:	E-01829

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	290,061	234,122	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation. See paragraphs 37-49 of the report.
Loss of stock	322,816	241,733	Claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of vehicles	67,752	59,622	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Payment or relief to others	269,767	196,928	Claim adjusted for evidentiary shortcomings. See paragraphs 57-59 of the report.
Loss of profits	2,248,304	0	Claim adjusted to reflect historical results. See paragraphs 60-68 of the report.
TOTAL	3,198,700	732,405	

Claim preparation costs	10,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.
Interest	155,737	n.a.	Governing Council's determination pending. See paragraph 84 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	International Meat and Foodstuff Company
UNCC claim number:	4005182
UNSEQ number:	E-02042

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	578,018	462,414	Original loss of tangible property claim reclassified as loss of real property, loss of tangible property, loss of stock, loss of cash and loss of vehicles. Claim adjusted for failure to repair/replace. See paragraphs 31-36 of the report.
Loss of tangible property	351,574	193,125	Claim adjusted for depreciation and failure to repair/replace. See paragraphs 37-49 of the report.
Loss of stock	2,478,380	1,215,108	Claim adjusted for obsolescence, stock build-up and evidentiary shortcomings. See paragraphs 39-45 of the report.
Loss of cash	5,155	0	Insufficient evidence to substantiate claim. See paragraph 47 of the report.
Loss of vehicles	46,112	36,890	Claim adjusted for evidentiary shortcomings. See paragraph 48 of the report.
Loss of profits	369,278	340,872	Claim adjusted to restrict period of loss to 12 months. See paragraphs 60-68 of the report.
Restart costs	402,280	0	Original loss of real property claim reclassified as restart costs. Insufficient evidence to substantiate claim. See paragraphs 74-78 of the report.
TOTAL	4,230,797	2,248,409	

Claim preparation costs	3,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex II

Recommended awards for ninth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al-Gharabally International Group Co. W.L.L.
UNCC claim number:	4005391
UNSEQ number:	E-02283

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	120,890	96,712	Claim adjusted for maintenance. See paragraphs 31-36 of the report.
Loss of tangible property	65,893	47,768	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation. See paragraphs 37-49 of the report.
Loss of stock	1,919,693	1,245,514	Claim adjusted for stock build-up and obsolescence. See paragraphs 39-45 of the report.
Loss of vehicles	14,250	13,500	Claim adjusted to reflect M.V.V. Table values. See paragraph 48 of the report.
Loss of profits	240,756	87,917	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 60-68 of the report.
TOTAL	2,361,482	1,491,411	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 85 of the report.

Annex XI

Decision concerning the ninth instalment of E4 claims taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the ninth instalment of "E4" claims, covering 21 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in annex I of the report, is as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Kuwait	21	-	525,371,204	228,804,975

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* Previously issued as document S/AC.26/Dec.129 (2001).

1/ The text of the report appears in document S/AC.26/2001/13 (annex X above).

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

4. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

Annex XII

Report and recommendations made by the Panel of Commissioners concerning the eleventh instalment of E4 claims*

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* Previously issued as document S/AC.26/2001/14.

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Introduction

1. At its thirtieth session, held on 14-16 December 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Luiz Olavo Baptista ("Chairman"), Jean Naudet, and Jianxi Wang as the second Panel of Commissioners (the "Panel") charged with reviewing category "E4" claims. The category "E4" population consists of claims, other than oil sector and environmental claims, submitted by Kuwaiti private-sector corporations and other entities eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. The eleventh instalment consisting of 19 "E4" claims was submitted to the Panel on 21 February 2000, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the eleventh instalment claims.

I. OVERVIEW OF THE ELEVENTH INSTALMENT CLAIMS

4. The eleventh instalment claims were selected from the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claims, the legal, factual, and valuation issues raised by the claims, and the date of filing of the claims with the Commission.

5. The eleventh instalment claimants filed losses aggregating Kuwaiti dinars ("KWD") 104,416,886 (approximately United States dollars ("USD") 361,304,104). The claimants have also asserted claims for interest totalling KWD 6,451,968 (approximately USD 22,325,149) and claim preparation costs aggregating KWD 158,000 (approximately USD 546,713).

6. The eleventh instalment claims are classified as "unusually large or complex" within the meaning of article 38(d) of the Rules. In other words, the amount claimed by each claimant is more than USD 10 million (approximately KWD 3 million), and, due to the nature of the legal and factual issues raised in the claims and the amount of documentation provided in support of the claimed loss, the Panel's verification and valuation of the claims have been completed within twelve months of the date the claims were submitted to the Panel.

7. All of the claimants in the eleventh instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Most claimants conducted trading operations dealing in a variety of goods.

8. The claimants in this instalment have sought compensation for all but two of the loss types identified on Form E. The two loss types for which no losses have been claimed relate to business transactions or course of dealing and loss of income-producing properties. The two most common losses asserted are loss of tangible property (mainly stock, furniture, fixtures, equipment and vehicles) and loss of earnings or profits. The claimants have also sought compensation for payment or relief to others, uncollectible receivables, restart costs, interest and claim preparation costs and "other losses".

II. THE PROCEEDINGS

9. Before the eleventh instalment claims were submitted to the Panel, the secretariat undertook a preliminary assessment of the claims in accordance with the Rules. This review is described in paragraph 11 of the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The results of the review were entered into a centralized database maintained by the secretariat (the "Claims Database").

10. Originally, three claims presented formal deficiencies and the secretariat issued notifications to the claimants pursuant to article 15 of the Rules. The claimants corrected all formal deficiencies.

11. A substantive review of the claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

12. The Executive Secretary of the Commission submitted reports Nos. 27, 28 and 29 dated 26 April 1999, 23 July 1999 and 28 October 1999, respectively, to the Governing Council in accordance with article 16 of the Rules ("article 16 reports"). These reports covered, inter alia, the eleventh instalment of "E4" claims. A number of Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

13. In addition to having access to narrative claim summaries for each claim in the eleventh instalment, the Panel also requested specific information and documents from the claimants pursuant to article 34 of the Rules. All such letters were directed through the Government of Kuwait's Public Authority for

Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC").

14. At the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents were made available to the Panel:

(a) The claim documents submitted by the claimants;

(b) The preliminary assessment reports prepared under article 14 of the Rules;

(c) Information and views of Governments, including the Government of Iraq, received in response to the article 16 reports; and

(d) Other information deemed, under article 32 of the Rules, to be useful to the Panel for its work.

15. For the reasons stated in paragraph 17 of the First "E4" Report, the Panel retained the services of an accounting firm and a loss adjusting firm as expert consultants. The Panel directed the expert consultants to review each claim in the eleventh instalment in accordance with the verification and valuation methodology developed by the Panel. The Panel directed the expert consultants to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings.

16. By its first procedural order dated 21 February 2000, the Panel gave notice of its intention to complete its review of the eleventh instalment claims and submit its report and recommendations to the Governing Council within twelve months of 21 February 2000. This procedural order was transmitted to the Government of Iraq and the Government of Kuwait.

17. By its second procedural order dated 22 February 2000, the Panel directed the transmittal to the Government of Iraq of a copy of the original claim file consisting of the claim form, the statement of claim and all supporting documents filed by one claimant whose claim involved elements relating to dealings with Iraqi entities. The Panel invited the Government of Iraq to submit its comments to this claim within 180 days of the date of the procedural order. Iraq's comments were received on 14 August 2000 and were reviewed and considered by the Panel.

18. Pursuant to article 34 of the Rules, specific interrogatories were transmitted to each claimant requesting additional information in order to assist the Panel in its review of the claims. All such letters were directed

through PAAC. Claimants who were unable to submit the evidence requested were asked to provide reasons for their inability to comply with such requests. The type of information required varied depending on the evidentiary shortcomings encountered for each claimant. These requests were made in relation to the entire "E4" claims population and not just the eleventh instalment claims.

19. These requests for additional information have been described in paragraphs 19-24 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report") and paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of 'E4' claims" (S/AC.26/2000/8). These requests for information are not restated in this report.

20. During the period 2-9 March 2000, at the direction of the Panel, six members of the secretariat and two expert accounting and loss adjusting consultants travelled to Kuwait for the purpose of conducting an on-site inspection during which the delegation met with all eleventh instalment claimants to obtain information for the Panel's review (the "Mission"). The delegation also carried out inspections of some of the claimant's premises, offices, showrooms, and warehouses. During meetings with the claimants, the delegation received some of the documents that had been requested through PAAC.

21. An additional level of verification was performed to determine if related claimants filed duplicate claims with the Commission. This review is described in paragraph 18 of the Fourth "E4" Report.

22. Based on its review of the documents submitted and the additional information obtained, the Panel concluded that the issues presented by the eleventh instalment claims had been adequately developed and that oral proceedings were not required to explore such issues further.

III. LEGAL FRAMEWORK AND VERIFICATION AND VALUATION METHODOLOGY

23. The legal framework and the verification and valuation methodology applied to the evaluation of claims in this instalment are the same as that used in earlier "E4" instalments. This framework and methodology are discussed in paragraphs 25-62 of the First "E4" Report. Subsequent "E4" reports discuss additional legal and verification and valuation issues that were encountered in later instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead this report

refers to sections in the previous "E4" reports where such issues have been addressed.

24. Where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are discussed in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the reasons therefore are set out in the annexes to this report.

25. Before discussing the Panel's specific recommendations for compensating the eleventh instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability always to provide best evidence against the "risk of overstatement" introduced by shortcomings in evidence. In this context, the term "risk of overstatement", as defined in paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

IV. THE CLAIMS

26. The Panel reviewed the claims according to the nature and type of loss identified. Therefore, the Panel's recommendations are set out by loss type. Reclassified losses have been dealt with in the section pertaining to the loss category into which the Panel reclassified the losses.

A. Contracts

27. One claimant in this instalment asserted a loss of contract in the amount of KD 1,997,106 (approximately USD 6,910,401). The Panel's approach to the compensability of contract losses is stated in prior "E4" reports and the verification and valuation methodology adopted by the Panel for the loss of contract claims is discussed in paragraphs 77-84 of the First "E4" Report.

28. Soir General Trading & Contracting Co. W.L.L. sought compensation for losses related to a stock of jewelry held on consignment (the "Consigned Goods") from Dianoor International Ltd. ("Dianoor") based in Hong Kong, which appears to be a related company. Under an agreement entered into between the claimant and Dianoor dated 2 February 1987 (the "Consignment Agreement"), title to the Consigned Goods remained with Dianoor until full payment or return thereof had been effected. The Consignment Agreement likewise provided that the claimant became liable to Dianoor for the full price of the goods in case of loss, damage or theft while in the claimant's possession. The claim

is for the value of the Consigned Goods that the claimant alleged were lost as a result of Iraq's invasion and occupation of Kuwait.

29. The Consigned Goods were not reflected as stock in the claimant's pre-invasion audited accounts from 31 August 1987 to 31 August 1989. Likewise, the sales generated therefrom were not reflected as such. The claimant explained that it was only Dianoor that recorded the sales from the Consigned Goods and that the value of the Consigned Goods was included as part of its "long-term liability" as indicated in the notes to the same pre-invasion audited accounts. As evidence in support of the transactions under the Consignment Agreement, the claimant submitted copies of internal "consignment notes" that gave details of the jewelry stated to have been received from Dianoor and the value thereof. The claimant also provided copies of internal "return notes", which the claimant sent to Dianoor whenever a sale was made. The claimant stated that this practice was carried out to maintain trade secrecy in its business.

30. The Panel determines that the claimant has not satisfactorily shown that it sustained a loss in relation to the Consigned Goods. In particular, the claimant has failed to submit sufficient evidence to establish the existence and value of the Consigned Goods. For example, there is no third-party evidence submitted in support of the consignment deliveries such as airway bills or other shipping documents. While it has submitted documents showing application for payments to be effected to Dianoor, the intended payments could not be directly related to the individual consignments appearing in an internally-generated list prepared by the claimant. Moreover, the Panel notes that the claimant has in fact not yet settled its long-term liability to Dianoor, ten years after the alleged loss occurred. Specifically, in a letter dated 13 April 2000 to the claimant, Dianoor confirmed that the value of the unreturned Consigned Goods was still outstanding. There is therefore no evidence that liability to Dianoor under the Consignment Agreement was incurred and settled. In the light of the foregoing, the Panel recommends no compensation for the claim.

31. The Panel's recommendations on loss of contract claims are summarized in annex II.

B. Real property

32. Ten claimants in this instalment asserted claims aggregating KWD 3,156,373 (approximately USD 10,921,706) for loss of real property. These claims relate to damage to a number of owned and rented premises in Kuwait.

33. The claims for loss of real property in this instalment did not raise any new legal or verification and valuation issues. The compensability standards and the verification and valuation methodology adopted by the Panel for loss of real property claims are stated in paragraphs 89-101 of the First "E4" Report.

34. The nature of damage to the properties and the location of the affected properties in Kuwait established that the losses were a direct result of Iraq's invasion and occupation of Kuwait. Claims were either based on the actual costs incurred in repairing the properties or on estimates of such costs.

35. Most claimants submitted sufficient evidence to establish their interest in the affected properties and the loss claimed. However, as was the case in earlier "E4" instalments, claimants generally did not exclude regular maintenance or depreciation costs from their claims. The Panel adjusted the claims to account for these costs, which would have been incurred in the normal course of business and were not a direct result of Iraq's invasion and occupation of Kuwait. A similar adjustment was made by the Panel in two cases of unforced "betterment", as explained in paragraph 97 of the First "E4" Report.

36. In claims based on estimated repair costs, the Panel sought a reasonable explanation for the claimant's failure to repair or replace the affected property. Where such explanation was absent, the Panel adjusted the claim to offset the "risk of overstatement" created by this shortcoming.

37. The Panel's recommendations on real property losses are summarized in annex II.

C. Tangible property, stock, cash and vehicles

38. Tangible property losses are claimed by all of the eleventh instalment claimants. The asserted losses, relating to stock, furniture and fixtures, equipment, vehicles and cash, aggregate KWD 69,177,212 (approximately USD 239,367,516).

39. With regard to the compensability and the verification and valuation of these tangible property claims, the Panel applied the approach set out in paragraphs 108-135 of the First "E4" Report.

40. The claimants in this instalment generally submitted the same type of evidence encountered by the Panel in earlier "E4" instalments in relation to claims for loss of tangible property and stock. (See "Report and

recommendation made by the Panel of Commissioners concerning the fifth instalment of 'E4' claims" (S/AC.26/2000/7) (the "Fifth 'E4' Report") at paragraphs 48-49, 56, and 61.)

41. Cash losses are claimed by three claimants in this instalment. Where claims for cash losses were not supported by contemporaneous evidence establishing the possession and amount of cash held on 2 August 1990, such as previous month-end cash balances, copies of daily bank deposit statements, cash-flow registers and monthly sales ledgers, the Panel recommended no compensation. Only one claimant in the eleventh instalment was successful in substantiating its claim for cash losses.

42. Most claimants with loss of vehicle claims were able to establish their losses by submitting copies of deregistration certificates and additional documents such as post-liberation audited accounts and witness statements that substantiated the fact and circumstances of their losses. The asserted values of the vehicles lost were separately verified by the Panel against vehicle values contained in the Motor Vehicle Valuation Table ("M.V.V. Table"), as defined at paragraph 135 of the First "E4" Report, or, for vehicles not listed in the M.V.V. Table, against other third-party estimates.

43. The Panel's recommendations on tangible property, stock, cash and vehicle losses are summarized in annex II.

D. Payment or relief to others

44. Three claimants in this instalment submitted claims aggregating KWD 441,783 (approximately USD 1,528,661) for payment or relief to others.

45. When reviewing claims for payment or relief to others the Panel applied the approach and verification and valuation methodology described at paragraphs 155-157 of the First "E4" Report and other earlier "E4" reports. (See, for example, Fourth "E4" Report at paragraphs 61-63.)

46. All three claimants seek reimbursement for redundancy payments or termination indemnities that were paid to their non-Kuwaiti employees in respect of the termination of those employees' employment contracts. The claimants provided schedules naming the employees to whom payments were made. Generally, the claimants also provided payroll lists and the employees' civil identification numbers or passport numbers. In two claims, namely, Ali Abdul Wahab Sons & Company W.L.L. and Al Andalus Trading Establishment Co. W.L.L., the Panel applied adjustments to reflect the extent to which insufficient proof of payment was provided for some of the named employees and for failure to provide adequate employment documentation. Photo & Cine Equipment failed

to provide any payment receipt or other document establishing the actual payment of amounts to its employees, nor was sufficient evidence submitted to substantiate that the individuals named were the employees of the claimant prior to Iraq's invasion and occupation of Kuwait. In view of the lack of evidence, the Panel recommends no compensation for this claim.

47. The Panel's recommendations on the payment or relief to others claims are summarized in annex II.

E. Loss of profits

48. Sixteen of the claimants in this instalment submitted claims for loss of profits aggregating KWD 15,293,423 (approximately USD 52,918,419).

49. Four significant legal and factual issues raised in the first instalment claims are all raised in the eleventh instalment claims. These issues relate to the impact and assessment of (i) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (ii) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (iii) the indemnity period for loss of profits claims, and (iv) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions in its considerations and recommendations for the loss of profits claims in this instalment.

50. The verification and valuation methodology adopted by the Panel for loss of profits claims is stated in paragraphs 194-202 of the First "E4" Report.

51. Two claimants recorded historical losses in their annual audited accounts during the three-year period prior to Iraq's invasion of Kuwait. Supplying Store Co. W.L.L., whose claim for rental income has been reclassified from contract losses, and Americana International Company, operated at net losses for each of the three years of business prior to the invasion. Based on the claimants' historical averages, the Panel recommends no compensation for these claims.

52. The Panel's recommendations on loss of profits claims are summarized in annex II.

F. Receivables

53. Six claimants in this instalment asserted claims for uncollectible receivables or "bad debts" aggregating KWD 9,771,808 (approximately USD

33,812,484). The majority of these claims were for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

54. As was the case in previous instalments of "E4" claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The issue raised is whether the uncollected debts had become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait.

55. The Panel reiterates the first "E4" Panel's determination on this issue as set out in paragraphs 208-210 of the First "E4" Report. Claims for debts that have become uncollectible as a result of Iraq's invasion and occupation of Kuwait must demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

56. The claims for uncollectible receivables were verified and valued in the same manner described in paragraphs 211-215 of the First "E4" Report. As discussed in that Report, the Panel recommends no award for claims that rely on the mere assertion that uncollected debts are ipso facto uncollectible because the debtors did not return to Kuwait, and where there is a failure to provide evidence demonstrating that the debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants, in the context of the additional information requested from claimants (see paragraphs 13, 18 and 19 above). In addition, during the Mission, the claimants were also requested to provide documentary evidence confirming that the debtors of the claimants were no longer in business as a result of Iraq's invasion and occupation of Kuwait.

57. Supplying Store Co. W.L.L. submitted a sample of copies of court judgments it had obtained against its debtors in support of its claim for bad debts. Only some of the court judgments specifically stated the amount of the debt due to the claimant and the date or period when the debts were incurred. In those instances where the court judgments indicated the period of the transactions giving rise to the debts, all of the transactions took place before 1990, in some cases as early as 1983. More importantly, none of the factual circumstances which resulted in the debtors' inability to pay the claimant were related to Iraq's invasion and occupation of Kuwait. Paragraph 212 of the First "E4" Report provides: "The Panel then reviews the period for which the claimant recognized the debt as outstanding prior to Iraq's invasion and occupation of Kuwait. To the extent the loss claimed relates to debt that would have been written off under international accounting practices prior to Iraq's invasion, the claim is disallowed. For all other receivables, the Panel seeks evidence that the invasion is a 'separate and distinct' direct

cause rendering such debt uncollectible. In cases where the claimant has not provided such evidence the Panel disallows the claim." In view of the foregoing, the Panel recommends no compensation for this claim.

58. Another claimant, Kahil International Group for Trade and General Contracting, submitted a claim for bad debts representing an amount owed by an individual of Iraqi nationality. The claimant presented a copy of a court judgment awarded on 31 October 1989 against the Iraqi debtor for a debt that resulted from business transactions made between 27 January 1984 and 29 April 1985. Since the debt was incurred in 1984 and 1985, it is clearly a debt of Iraq arising prior to 2 August 1990. With regard to debts owed by Iraqi entities, the Panel notes that the Governing Council has previously approved reports by other category "E" Panels where it was determined that the Commission does not have jurisdiction over a debt or obligation that is based on work performed or services rendered prior to 2 May 1990. (See, for example, "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E2' claims" (S/AC.26/1998/7) at paragraph 90; and "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E3' claims" (S/AC.26/1999/14), at paragraphs 21-23.) The Panel therefore recommends no compensation for this claim.

59. One claimant was able to satisfy the criteria established in the First "E4" Report for a portion of the amount claimed. Supply and Building Company W.L.L. submitted a claim for accounts receivables due from Iraq's Ministry of Planning, the Embassy of Iraq in Kuwait, Iraqi Airways and five other corporate entities which, as stated by the claimant, were under Iraqi management during Iraq's invasion and occupation of Kuwait. The claimant failed to provide documentary evidence identifying the managing authority for the five companies or the country of incorporation of these entities. However, it did provide evidence of unpaid credit invoices dated between February and July 1990 due from the three Iraqi entities mentioned. Hence, the Panel only recommends the unpaid portion of the amount owed by Iraq's Ministry of Planning, the Embassy of Iraq in Kuwait and Iraqi Airways that relates to stock, machinery and furniture obtained from the claimant on or after 2 May 1990.

60. In response to letters issued pursuant to article 34 of the Rules (see paragraph 17., supra), two claimants reduced their claims for bad debts to reflect amounts recovered from their debtors after their claims were submitted. Al Alamiah Electronics Company reduced its original claim from KWD 4,822,740 (approximately USD 16,687,682) to KWD 4,619,740 (approximately USD 15,985,260) and Supplying Store Co. W.L.L. reduced its original claim from KWD 3,025,671 (approximately USD 10,469,450) to KWD 2,522,288 (approximately

USD 8,727,640). Although the Panel considered this information when it recommended the awards, the reductions in the amounts asserted are not reflected in the amounts claimed, as shown in annexes I and II to this report.

61. The Panel's recommendations with respect to "bad debt" claims are summarized in annex II.

G. Restart costs

62. Five claimants in this instalment asserted claims aggregating KWD 269,916 (approximately USD 933,965) for restart costs. The claims have been reviewed using the methodology discussed in paragraphs 221-223 of the First "E4" Report and paragraphs 93-96 of the Second "E4" Report. (See also, Fourth "E4" Report, paragraphs 87-89.)

63. Soir General Trading & Contracting Co. W.L.L. submitted a claim for salaries of an employee and a manager from August 1991 to December 1991 which were asserted to have been incurred pending normalization of business. The claimant also submitted a claim for rent paid for the period from July 1991 to December 1991 to allow refurbishment and redecoration of the claimant's showroom. The claimant provided payment vouchers and employment contracts in relation to the salary claim, and copies of checks issued to its lessor for the rental payment. The Panel found that these expenses were not extraordinary expenses directly related to Iraq's invasion and occupation of Kuwait since they would have been incurred by the claimant regardless of the invasion and occupation. Therefore, the Panel recommends no compensation for this claim.

64. For the same reason, the claim of Al Alamiah Electronics Co. for salaries paid to recruit and retain employees and rental payments for the claimant's showrooms for the period from June 1990 through September 1990 and the claim of Kuwait Furniture Manufacturing & Trading Co. for salaries and other expenses for 1991 and 1992, are recommended no compensation by the Panel upon a finding that these expenses were not shown to be incremental in nature, i.e., over and above the normal operating expenses of the claimants. In addition, Al Alamiah Electronics Co. also seeks reimbursement for costs incurred to relocate thirty-five of its employees to a new office in Egypt during Iraq's occupation of Kuwait. The claimant, however, failed to provide any proof that such expenses were incurred, stating that it could not locate the records of the asserted payments. Hence, the Panel recommends no compensation for this claim.

65. Al Ahlia Spare Parts Company seeks compensation for the cost of airline tickets purchased by the claimant to return employees to Kuwait following its

liberation. The Panel finds that, in principle, such a loss is a direct result of Iraq's invasion and occupation of Kuwait as it was reasonable that evacuated employees would need to be returned to Kuwait for the claimant to mitigate its losses. When reviewing this claim, the Panel applied the criteria described in paragraph 88 of the Fourth "E4" Report. The claimant supported its claim for the return of employees to Kuwait by an invoice from the travel agency that facilitated the purchase of the tickets, a copy of its payroll list for the month of July 1990, a list of the employees with their re-entry date into Kuwait and a sample of signed declarations from eight employees stating that the tickets were not given to them by the claimant in the form of a loan. In the light of the fact that the claimant was able to meet the Panel's criteria on the evidence required, the Panel recommends compensation for the claim, making also adjustments for risk of overstatement. The adjustments were made to the extent that one individual did not appear in the payroll list and an employee's date of return into Kuwait is prior to the invasion.

66. The Panel's recommendations on restart costs are summarized in annex II.

H. Other losses

67. Six claimants in this instalment asserted claims aggregating KWD 4,309,265 (approximately USD 14,910,952) for "other losses."

68. Claims for "other losses" have been reviewed in the same manner as stated in earlier "E4" reports. (See, for example, the Second "E4" Report at paragraph 108, the Fourth "E4" Report at paragraph 103 and the Fifth "E4" Report at paragraph 105 with respect to the treatment of prepaid expenses; and the Fourth "E4" Report at paragraph 99 and the Fifth "E4" Report at paragraph 104 with respect to the claims for reimbursement of bribes.)

69. One claimant, Kahil International Group for Trade and General Contracting, claimed for late payment penalties and interest charges imposed by its bank as a result of the claimant's failure to pay documentary bills on their due date during Iraq's occupation of Kuwait. The penalties and interest were debited from the claimant's bank account post-liberation. The claimant provided summaries of the amounts debited. Subsequent to the filing of its claim, the claimant informed the Commission that the bank had cancelled the late penalties and interest charges on account of partial payment made by the claimant of the amounts due to the bank as part of the Difficult Debt Settlement Program of Law No. 41. The Panel found that the claimant has suffered no loss for which compensation can be sought.

70. Al Ahlia Auto Spare Parts Company sought compensation for additional shipping expenses and interest charges incurred to ship goods from Dubai to Kuwait post-liberation. The claimant stated that the shipment was diverted to Dubai from its original port of delivery in Kuwait as a result of Iraq's invasion and occupation of Kuwait. The claimant provided a schedule of expenses, together with invoices and evidence of payment. However, the claimant failed to submit shipping and port authority documents to show that the goods were originally off-loaded in Dubai and thereafter re-shipped to Kuwait. In addition, the claimant has not demonstrated the incremental nature of the interest charges imposed on the letters of credit which were opened to pay for the goods. The Panel recommends no compensation for the claim.

71. A claim for software development costs is asserted by Al Alamiah Electronics Co. The claim covers losses in the claimant's medium and short term software projects. The claimant stated that Iraq's invasion and occupation of Kuwait disrupted its operations and resulted in losses to its software projects. The losses were attributed by the claimant to one or a combination of the following causes: (a) The uncertain situation in Kuwait during Iraq's occupation resulted in the departure of many employees from the company thus leaving the projects incomplete; (b) The chaotic situation in the country disrupted the work such that many parts of the software programs were not documented. This meant that the software products had to be completely or partially redone afterwards; and (c) The claimant decided to resume its operations in Egypt during Iraq's occupation of Kuwait. During the move, some of the materials (tapes, disks, documentation and design materials) were lost in transit.

72. In valuing its loss per project, the claimant calculated its loss as a percentage of the cost of the work on the project, admitting that the link between the identified "loss-causing" factors and the assessed percentage loss could not be determined by a standard formula. No specific explanation or detailed computation was provided by the claimant in support of the percentage applied to the individual software projects.

73. The Panel recognizes that, in general, a claim for losses related to software development is not easily valued, as the impact of "external factors" such as market demand, competition and trends in technology are difficult to quantify. For example, the claimant indicated that part of its claim was caused by the departure of employees as a result of Iraq's invasion and occupation of Kuwait and the subsequent relocation of the software division to Egypt. One of the "key" employees who resigned was reported by the claimant to be presently employed by Microsoft Corporation. As employees may leave a company for many reasons including a higher salary or better opportunities with a competitor, the burden of proof lies on the claimant to establish that

the departure of its employees was directly related to Iraq's invasion and occupation of Kuwait. No such evidence was provided by the claimant in support of this assertion.

74. Therefore, to enable an objective evaluation of the claimed losses, the Panel adopted criteria using the risk assessment categories in a loss of profits claim as guideline. The claim was reviewed and evaluated based on the claimant's ability to satisfy the following criteria: (a) Details of pre-invasion costs incurred on a project basis as of 1 August 1990 (including evidence of the percentage of completed work, employee timesheets, detailed project summaries) should be provided and reconciled to the audited accounts; (b) The items of loss should be quantified in detail and the reasons for the loss should be clearly identified (e.g., loss of materials, loss of records, departure of employee); (c) It must be demonstrated that post-liberation sales equal or exceed the claim value for each project claimed (i.e., sales invoices may be submitted); and (d) It must be demonstrated that post-liberation replacement for at least 80 per cent of the project materials lost has been undertaken. The claimant failed to satisfy any of these identified criteria.

75. In the light of the foregoing, the Panel determined that the claimant failed to provide sufficient evidence to establish the amount of loss, the circumstances in which the loss occurred and the cause of the loss. Hence, the Panel recommends no compensation for the claim.

76. Sulaiman Al Abdul Karim & Bros. Co. seeks compensation for the difference between the book value of its stock sold for Iraqi dinars during Iraq's occupation of Kuwait, and the money refunded to the claimant by the Government of Kuwait in exchange for the Iraqi dinars. The Government's payment was made at a 1:6 rate of exchange. The claimant provided receipts confirming the hand over of the Iraqi dinars to the Government of Kuwait and copies of a bank advice showing the amount paid by the Government of Kuwait in exchange for the occupational currency. The claimant failed, however, to provide contemporaneous evidence to support the alleged book value of the stock sold during the occupation, nor did it report an extraordinary loss post-liberation in its audited accounts specifically reflecting the sale of stock in Iraqi dinars during the occupation. Moreover, the Panel notes that the claimant has already been compensated by the Government of Kuwait at a rate of 6 Iraqi dinars to 1 Kuwaiti dinar, which is the rate approved by the Panel for the purpose of verifying and valuing claims for this type of currency loss (see paragraph 97 of the Fourth "E4" Report). In the light of the foregoing, the Panel recommends no compensation for the claim.

77. Ahmed Al Saleh & Sons Co. submitted a claim for lost cash, gold, antiques and Persian and Turkish rugs which were kept in the home of Mr. Ahmed

Al Saleh, who is represented as the owner of the family business (but is not a named stockholder of the claimant). The claimant submitted a statement from Mr. Ahmed Al Saleh wherein Mr. Ahmed Al Saleh enumerates the items of "personal property" stolen from his house. The Panel found that the stolen items were clearly shown to be part of the household contents of Mr. Ahmed Al Saleh and were not properties of the claimant. In addition, the claimant failed to demonstrate any business interest in these properties or the business purpose thereof. For these reasons, the Panel recommends no compensation for this claim.

78. The Panel's recommendations on other losses are summarized in annex II.

V. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

79. In relation to the applicable dates for currency exchange rate and interest, the Panel has adopted the approach discussed in paragraphs 226-233 of the First "E4" Report.

B. Claim preparation costs

80. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel has made no recommendation with respect to compensation for claim preparation costs.

VI. RECOMMENDED AWARDS

81. Based on the foregoing, the awards recommended by the Panel for the claimants in the eleventh instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. All sums have been rounded to the nearest KWD and therefore the amounts may vary from the amount stated on Form E by 1 KWD.

Geneva, 18 December 2000

(Signed) Luiz Olavo Baptista
Chairman

(Signed) Jean Naudet
Commissioner

(Signed) Jianxi Wang
Commissioner

Annex I

Recommended awards for the eleventh instalment of "E4" claims

Reported by UNSEQ and UNCC claim number and claimant name

UNSEQ Claim No. a/	UNCC Claim No.	Claimant's name	Amount claimed (KWD)	Net amount claimed (KWD) b/	Amount recommended (KWD)	Amount recommended (USD)
E-00106	4003153	Sportsman Company - Khalid Al Rodhan & Partners	4,543,872	4,539,872	3,378,558	11,688,585
E-00159	4003275	Sahoo Modern Exhibition Company, Sahoo Ali & Partner W.L.L.	2,937,762	2,930,302	1,604,943	5,553,436
E-00257	4003394	Soir General Trading & Contracting Co. W.L.L.	3,078,589	3,073,589	431,874	1,494,374
E-00460	4003569	International Center for Foodstuff Co.	3,658,179	3,655,829	2,243,239	7,762,073
E-00516	4003629	Kahil International Group Company for Trade and General Contracting W.L.L.	6,786,905	6,764,905	4,401,003	15,221,149
E-00830	4003962	Americana International Company (Safeway) K.S.C.	5,071,405	4,496,942	2,367,904	8,193,439
E-00903	4004021	Ali Abdul Wahab Sons & Company W.L.L.	6,647,966	5,936,104	3,357,557	11,604,512
E-00946	4004008	Al Andalus Trading Establishment Co.	4,499,462	3,871,965	2,796,701	9,677,166
E-01159	4004267	Supply and Building Company W.L.L.	4,018,022	4,018,022	2,934,415	10,146,699
E-01207	4004315	Al Alamiah Electronics Co.	17,374,541	17,331,041	3,682,813	12,741,077
E-01348	4004455	Photo & Cine Equipment Company	2,890,109	2,603,084	1,827,326	6,322,927
E-01413	4004515	Electronic Appliances Corporation W.L.L.	4,459,868	3,686,755	1,791,219	6,197,990
E-01453	4004574	Supplying Store Co. W.L.L.	7,342,761	6,410,861	2,351,386	8,136,284
E-01559	4004657	Al Ahlia Auto Spare Parts Company	4,784,915	4,428,274	3,179,664	10,999,133
E-01646	4004781	Sulaiman Al-Abdul Karim & Bros. Limited Co. W.L.L.	3,551,286	3,094,416	1,496,129	5,175,332
E-01748	4004856	Ahmed Al Saleh & Sons Co.	16,979,498	15,181,711	3,693,147	12,763,121
E-01776	4004884	Kuwait Furniture Manufacturing & Trading Co.	3,394,430	3,385,930	2,440,303	8,443,846
E-01989	4005097	Sport House Company	3,365,637	3,365,637	2,444,548	8,458,644
E-02195	4005304	Al Ola General Trading & Cont. Co.	5,641,647	5,641,647	3,177,270	10,987,872
TOTAL			111,026,854	104,416,886	49,599,999	171,567,659

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a/ The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

b/ The "Net amount claimed" is the original amount claimed less the amounts claimed for claim preparation costs and interest. As set forth in paragraphs 74 and 75 of the report, the Panel has made no recommendation with regard to these items.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Sportsman Company - Khalid Al Rodhan & Partners
UNCC claim number:	4003153
UNSEQ number:	E-00106

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	63,113	51,843	Original tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for failure to repair/replace. See paragraphs 38-43 of the report.
Loss of stock	4,003,048	3,143,215	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of cash	4,778	0	Original payment or relief to others claim reclassified as loss of cash. Insufficient evidence to substantiate claim. See paragraphs 38-43 of the report.
Loss of vehicles	10,346	7,316	Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of profits	458,587	176,184	Claim adjusted to reflect historical results. See paragraphs 48-52 of the report.
TOTAL	4,539,872	3,378,558	

Claim preparation costs	4,000	n.a.	Governing Council's determination pending. See paragraph 80 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sahoo Modern Exhibition Company, Sahoo Ali Al Sahoo & Partner W.L.L.

UNCC claim number: 4003275

UNSEQ number: E-00159

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	2,081,972	1,451,160	Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Claim adjusted to reflect historical results, for stock build-up and obsolescence. See paragraphs 38-43 of the report.
Loss of vehicles	4,546	1,029	Claim adjusted to reflect M.V.V. Table values. See paragraphs 38-43 of the report.
Loss of profits	843,784	152,754	Claim adjusted for evidentiary shortcomings and to restrict period of loss to 7 months. See paragraphs 48-52 of the report.
TOTAL	2,930,302	1,604,943	

Claim preparation costs	7,460	n.a.	Governing Council's determination pending. See paragraph 80 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Soir General Trading & Contracting Co. W.L.L.
UNCC claim number:	4003394
UNSEQ number:	E-00257

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	1,997,106	0	Insufficient evidence to substantiate claim. See paragraphs 27-31 of the report.
Loss of tangible property	35,934	35,934	Original loss of tangible property claim reclassified as loss of tangible property and loss of stock. Recommend awarding claim in full. See paragraphs 38-43 of the report.
Loss of stock	1,024,170	395,940	Original loss of stock claim reclassified as loss of stock and loss of contract. Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 38-43 of the report.
Restart costs	16,379	0	Insufficient evidence to substantiate claim. See paragraph 63 of the report. See paragraphs 62-66 of the report.
TOTAL	3,073,589	431,874	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 80 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	International Center for Foodstuff Co.
UNCC claim number:	4003569
UNSEQ number:	E-00460

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	3,167,089	1,760,130	Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Claim adjusted to reflect historical results, for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	39,431	33,800	Claim adjusted per paragraph 42 of the report. See paragraphs 38-43 of the report.
Loss of profits	449,309	449,309	Recommend awarding claim in full. See paragraphs 48-52 of the report.
TOTAL	3,655,829	2,243,239	

Claim preparation costs	2,350	n.a.	Governing Council's determination pending. See paragraph 80 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kahil International Group Company for Trade and General Contracting W.L.L.
UNCC claim number: 4003629
UNSEQ number: E-00516

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	729,603	639,869	Original loss of tangible property claim reclassified as loss of real property and loss of stock. Claim adjusted for maintenance and depreciation. See paragraphs 32-37 of the report.
Loss of stock	4,756,170	3,099,862	Claim adjusted to reflect historical results, for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of profits	936,450	661,272	Claim adjusted to reflect historical results and to restrict period of loss to 12 months. See paragraphs 48-52 of the report.
Bad debts	111,019	0	Insufficient evidence to substantiate claim. See paragraphs 53-61 of the report.
Other loss not categorised	231,663	0	Insufficient evidence to substantiate claim. See paragraphs 67-78 of the report.
TOTAL	6,764,905	4,401,003	

Claim preparation costs	22,000	n.a.	Governing Council's determination pending. See paragraph 80 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Americana International Company (Safeway) K.S.C.
UNCC claim number: 4003962
UNSEQ number: E-00830

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	806,548	624,656	Original loss of contracts claim reclassified as loss of real property. Claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 32-37 of the report.
Loss of tangible property	1,284,728	976,911	Original loss of tangible property reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of stock	1,775,067	745,804	Claim adjusted to reflect historical results, for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	25,439	20,533	Claim adjusted to reflect M.V.V. Table values and per paragraph 42 of the report. See paragraphs 38-43 of the report.
Loss of profits	605,160	0	Insufficient evidence to substantiate claim. See paragraphs 48-52 of the report.
TOTAL	4,496,942	2,367,904	

Claim preparation costs	4,850	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	569,613	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Ali Abdul Wahab Sons & Company W.L.L.
UNCC claim number:	4004021
UNSEQ number:	E-00903

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	44,348	32,048	Claim adjusted for depreciation and maintenance. See paragraphs 32-37 of the report.
Loss of stock	3,306,566	1,711,840	Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Claim adjusted for evidentiary shortcomings and obsolescence. See paragraphs 38-43 of the report.
Loss of vehicles	25,415	25,400	Claim adjusted to reflect M.V.V. Table values. See paragraphs 38-43 of the report.
Payment or relief to others	145,808	53,294	Claim adjusted for evidentiary shortcomings. See paragraphs 44-47 of the report.
Loss of profits	2,413,967	1,534,975	Original other loss not categorised claim reclassified as loss of profits. Claim adjusted to reflect historical results and for windfall profits. See paragraphs 48-52 of the report.
TOTAL	5,936,104	3,357,557	

Claim preparation costs	5,250	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	706,612	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Andalus Trading Establishment Co. W.L.L.
UNCC claim number:	4004008
UNSEQ number:	E-00946

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	37,273	25,761	Original loss of real property claim reclassified as loss of real property and loss of tangible property. Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 32-37 of the report.
Loss of tangible property	51,332	25,257	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Claim adjusted for depreciation, maintenance, failure to repair/replace and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of stock	3,422,432	2,617,957	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of cash	14,310	0	Insufficient evidence to substantiate claim. See paragraphs 38-43 of the report.
Loss of vehicles	5,771	5,771	Recommend awarding claim in full. See paragraphs 38-43 of the report.
Payment or relief to others	137,201	34,367	Claim adjusted for evidentiary shortcomings. See paragraphs 44-47 of the report.
Loss of profits	203,456	87,588	Claim adjusted to reflect historical results and for windfall profits. See paragraphs 48-52 of the report.
Restart costs	190	0	Original loss due to restart costs claim reclassified as loss due to restart costs and loss of tangible property. Insufficient evidence to substantiate claim. See paragraphs 62-66 of the report.
TOTAL	3,871,965	2,796,701	

Claim preparation costs	4,060	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	623,437	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Supply & Building Company W.L.L.
UNCC claim number:	4004267
UNSEQ number:	E-01159

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	222,135	135,596	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of cash and loss of vehicles. Claim adjusted for evidentiary shortcomings and failure to repair/replace. See paragraphs 38-43 of the report.
Loss of stock	2,684,148	2,104,437	Claim adjusted for obsolescence, evidentiary shortcomings and to reflect historical results. See paragraphs 38-43 of the report.
Loss of cash	7,213	5,091	Claim adjusted for evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	39,716	20,948	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values. See paragraphs 38-43 of the report.
Loss of profits	841,313	638,541	Claim adjusted to reflect historical results and to restrict period of loss to 12 months. See paragraphs 48-52 of the report.
Bad debts	223,497	29,802	Claim adjusted for evidentiary shortcomings. See paragraphs 53-61 of the report.
TOTAL	4,018,022	2,934,415	

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Alamiah Electronics Co.
UNCC claim number: 4004315
UNSEQ number: E-01207

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	235,791	166,357	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of stock	5,417,705	2,896,091	Claim adjusted to reflect historical results, for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	1,532	1,532	Recommend awarding claim in full. See paragraphs 38-43 of the report.
Loss of profits	4,159,393	618,833	Original loss of income producing claim reclassified as loss of profits. Claim adjusted to reflect historical results and for windfall profits. See paragraphs 48-52 of the report.
Bad debts	4,822,740	0	Insufficient evidence to substantiate claim. See paragraphs 53-61 of the report.
Restart costs	192,660	0	Original loss due to restart costs claim reclassified as loss due to restart costs, loss of profits and other loss not categorised. Insufficient evidence to substantiate claim. See paragraphs 62-66 of the report.
Other loss not categorised	2,501,220	0	Original other loss not categorised claim reclassified as other loss not categorised, loss of profits and loss due to restart costs. Insufficient evidence to substantiate claim. See paragraphs 67-78 of the report.
TOTAL	17,331,041	3,682,813	

Claim preparation costs	43,500	n.a.	Governing Council's determination pending. See paragraph 80 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Photo & Cine Equipment Company
UNCC claim number: 4004455
UNSEQ number: E-01348

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	251,720	168,174	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace. See paragraphs 38-43 of the report.
Loss of stock	2,175,790	1,642,602	Claim adjusted to reflect historical results, for obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	16,800	16,550	Claim adjusted to reflect M.V.V. Table values. See paragraphs 38-43 of the report.
Payment or relief to others	158,774	0	Insufficient evidence to substantiate claim. See paragraphs 44-47 of the report.
TOTAL	2,603,084	1,827,326	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	282,025	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Electronic Appliances Corporation W.L.L.
UNCC claim number: 4004515
UNSEQ number: E-01413

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	16,992	6,481	Claim adjusted for depreciation, maintenance and evidentiary shortcomings. See paragraphs 32-37 of the report.
Loss of stock	2,198,850	1,784,738	Original tangible property claim reclassified as loss of stock. Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Bad debts	1,376,956	0	Insufficient evidence to substantiate claim. See paragraphs 53-61 of the report.
Other loss not categorised	93,957	0	Insufficient evidence to substantiate claim. See paragraphs 67-78 of the report.
TOTAL	3,686,755	1,791,219	

Claim preparation costs	7,100	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	766,013	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Supplying Store Co. W.L.L.
UNCC claim number: 4004574
UNSEQ number: E-01453

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	128,515	98,927	Claim adjusted for depreciation and maintenance. See paragraphs 32-37 of the report.
Loss of stock	3,193,202	2,245,942	Original loss of tangible property claim reclassified as loss of stock and loss of vehicles. Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	6,600	6,517	Claim adjusted to reflect M.V.V. Table values. See paragraphs 38-43 of the report.
Loss of profits	56,873	0	Original loss of contracts claim reclassified as loss of profits. Insufficient evidence to substantiate claim. See paragraphs 48-52 of the report.
Bad debts	3,025,671	0	Insufficient evidence to substantiate claim. See paragraphs 53-61 of the report.
TOTAL	6,410,861	2,351,386	

Claim preparation costs	4,000	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	927,900	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Ahlia Auto Spare Parts Company
UNCC claim number: 4004657
UNSEQ number: E 01559

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	24,093	19,096	Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 32-37 of the report.
Loss of tangible property	24,082	13,244	Original loss of tangible property claim reclassified as loss of real property, loss of tangible property and loss of stock. Claim adjusted for maintenance, depreciation and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of stock	3,672,369	2,855,233	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of profits	314,839	289,254	Claim adjusted to reflect historical results. See paragraphs 48-52 of the report.
Bad debts	211,925	0	Insufficient evidence to substantiate claim. See paragraphs 53-61 of the report.
Restart costs	3,338	2,837	Claim adjusted for evidentiary shortcomings. See paragraphs 62-66 of the report.
Other loss not categorised	177,628	0	Original other loss not categorised reclassified as other loss not categorised, loss of stock, loss of profit and restart costs. Insufficient evidence to substantiate claim. See paragraphs 67-78 of the report.
TOTAL	4,428,274	3,179,664	

Claim preparation costs	10,000	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	346,641	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Sulaiman Al-Abdul Karim & Bros Limited Co. W.L.L.
UNCC claim number: 4004781
UNSEQ number: E-01646

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	159,786	85,148	Claim adjusted for maintenance, depreciation, betterment and evidentiary shortcomings. See paragraphs 32-37 of the report.
Loss of tangible property	4,016	2,934	Original loss of tangible property claim reclassified as loss of real property, loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for maintenance and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of stock	1,554,194	1,251,543	Claim adjusted to reflect historical results, for obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	7,400	7,154	Claim adjusted to reflect M.V.V. Table values. See paragraphs 38-43 of the report.
Loss of profits	545,829	149,350	Claim adjusted to reflect historical results, for windfall profits and to restrict period of loss to 9 months. See paragraphs 48-52 of the report.
Other loss not categorised	823,191	0	Insufficient evidence to substantiate claim. See paragraphs 67-78 of the report.
TOTAL	3,094,416	1,496,129	

Claim preparation costs	3,880	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	452,990	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ahmed Al Saleh & Sons Co.
UNCC claim number: 4004856
UNSEQ number: E-01748

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	708,019	189,909	Original loss of real property claim reclassified as loss of real property and loss of profits. Claim adjusted for evidentiary shortcomings, maintenance and betterment. See paragraphs 32-37 of the report.
Loss of tangible property	7,065	7,065	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock, loss of vehicles and other loss not categorised. Recommend awarding claim in full. See paragraphs 38-43 of the report.
Loss of stock	11,800,000	2,023,728	Claim adjusted to reflect historical results, for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	29,500	16,000	Claim adjusted to reflect M.V.V. Table values and per paragraph 42 of the report. See paragraphs 38-43 of the report.
Loss of profits	2,155,521	1,456,445	Claim adjusted to reflect historical results and for evidentiary shortcomings. See paragraphs 48-52 of the report.
Other loss not categorised	481,606	0	Insufficient evidence to substantiate claim. See paragraphs 67-78 of the report.
TOTAL	15,181,711	3,693,147	

Claim preparation costs	21,050	n.a.	Governing Council's determination pending. See paragraph 80 of the report.
Interest	1,776,737	n.a.	Governing Council's determination pending. See paragraph 79 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Furniture Manufacturing & Trading Co.
UNCC claim number: 4004884
UNSEQ number: E-01776

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	501,196	167,037	Claim adjusted for a mathematical error, depreciation, maintenance, evidentiary shortcomings and failure to repair/replace. See paragraphs 32-37 of the report.
Loss of tangible property	241,398	168,877	Original loss of tangible property claim reclassified as loss of tangible property, loss of stock and loss of vehicles. Claim adjusted for depreciation and failure to repair/replace. See paragraphs 38-43 of the report.
Loss of stock	2,159,489	1,920,144	Claim adjusted for obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of vehicles	38,800	29,532	Claim adjusted to reflect M.V.V. Table values. See paragraphs 38-43 of the report.
Loss of profits	387,698	154,713	Claim adjusted to reflect historical results, for windfall profits and to restrict period of loss to 17 months. See paragraphs 48-52 of the report.
Restart costs	57,349	0	Insufficient evidence to substantiate claim. See paragraphs 62-66 of the report.
TOTAL	3,385,930	2,440,303	

Claim preparation costs	8,500	n.a.	Governing Council's determination pending. See paragraph 80 of the report.

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Sport House Company
UNCC claim number:	4005097
UNSEQ number:	E-01989

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	3,005,765	2,283,919	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted for stock build-up and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of profits	359,872	160,629	Claim adjusted to reflect historical results and to restrict period of loss to 7 months. See paragraphs 48-52 of the report.
TOTAL	3,365,637	2,444,548	

Annex II

Recommended awards for the eleventh instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name:	Al Ola General Trading & Cont. Co.
UNCC claim number:	4005304
UNSEQ number:	E-02195

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of stock	5,080,275	2,615,898	Original loss of tangible property claim reclassified as loss of stock. Claim adjusted to reflect historical results, for stock build-up, obsolescence and evidentiary shortcomings. See paragraphs 38-43 of the report.
Loss of profits	561,372	561,372	Recommend awarding claim in full. See paragraphs 48-52 of the report.
TOTAL	5,641,647	3,177,270	

Annex XIII

Decision concerning the eleventh instalment of E4 claims taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the eleventh instalment of "E4" claims, covering 19 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amount awarded, based on the recommendations contained in annex I of the report, is as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Kuwait	19	-	384,175,965	171,567,659

3. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)).

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* Previously issued as document S/AC.26/Dec.130 (2001).

1/ The text of the report appears in document S/AC.26/2001/14 (annex XII above).

4. *Recalls* that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), the Government of the State of Kuwait shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

5. *Requests* the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to the Government of the State of Kuwait.

Annex XIV

Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of F1 claims*

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* Previously issued as document S/AC.26/2001/15.

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Introduction

1. This is the sixth report (the "Report") submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners (the "Panel") appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review "F1" claims. 2/ This Report sets forth the Panel's determinations and recommendations to the Governing Council with respect to the fifth instalment of "F1" claims, comprising 16 claims (the "Claims") submitted by four Governments (collectively the "Claimants").

2. The fifth instalment was submitted to the Panel in accordance with article 32 of the Rules on 2 December 1999. The Claims seek compensation in the approximate original amount of 8,575,069,804 United States dollars ("USD"). The Claimants are listed in Table 1 below, together with the original and amended amounts of compensation claimed.

Table 1. Summary of amounts claimed in the fifth instalment of "F1" claims

Claimant	Original amount claimed 3/ (USD)	Amended amount claimed 4/ (USD)
Federal Republic of Germany - Ministry of Foreign Affairs 5/	131,605,001	130,906,469
State of Israel - Consolidated Claim 6/	1,071,000,000	1,071,300,000
Syrian Arab Republic - Central Bank of Syria	848,000,000	425,000,000
Syrian Arab Republic - Ministry of Defence	1,366,995,121	1,366,995,121
Syrian Arab Republic - Ministry of Economy and Foreign Trade	180,000,000	188,516,000
Syrian Arab Republic - Ministry of Finance	383,005,161	383,005,161
Syrian Arab Republic - Ministry of Health	58,978,000	59,362,142
Syrian Arab Republic - Ministry of Irrigation	462,222,220	465,625,000
Syrian Arab Republic - Ministry of Petroleum and Mineral Resources	360,000,000	360,000,000
Syrian Arab Republic - Ministry of Tourism	455,921,280	590,972,400
Republic of Turkey - Ministry of Public Works and Settlement, General Directorate of Highways	12,656,698	12,656,698
Republic of Turkey - Prime Ministry, General Directorate of Rural Services	55,937,337	55,937,337
Republic of Turkey - Ministry of National Defence	929,652,349	929,652,349
Republic of Turkey - Ministry of National Education	53,509	55,625
Republic of Turkey - Ministry of Tourism	1,395,006,573	1,395,006,573
Republic of Turkey - Central Bank of the Republic of Turkey 7/	864,036,555	992,726,102
Total	8,575,069,804	8,427,716,977

I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims and their significant legal and factual issues to the Governing Council in the nineteenth, twentieth, twenty-third and twenty-eighth reports, dated 11 April 1997, 16 July 1997, 2 April 1998 and 23 July 1999, respectively. Those reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted their information and views concerning the reports to the Commission. These responses have been considered by the Panel during its review of the Claims.

4. In April 1999, pursuant to article 36 of the Rules and after a competitive bidding process, the services of expert consultants in accounting and loss adjusting were retained to assist the Panel in the verification and valuation of the Claims. After a preliminary review of the Claims, notifications pursuant to article 34 of the Rules ("article 34 notifications") were issued to the Claimants in June 1999 requesting additional information and documents to assist the Panel in its review of the Claims.

5. Upon submission of the Claims to the Panel on 2 December 1999, procedural orders were issued informing the Claimants that their Claims were under review and had been classified as "unusually large or complex" within the meaning of article 38(d) of the Rules, and that, accordingly, the Panel would complete its review of the Claims and submit its report and recommendations thereon to the Governing Council within twelve months. At the instruction of the Panel, copies of the procedural orders were sent to Iraq.

6. The Panel considered that Iraq could provide information that would assist its review of the claim of the Central Bank of the Republic of Turkey and issued a procedural order directing that a copy of that claim as filed by the Republic of Turkey be transmitted to Iraq. In accordance with article 36 of the Rules, Iraq was invited to submit a response to the claim. A response was received from Iraq, and the Panel has considered the response during its review of the claim.

7. On 7 April 2000, the secretariat informed the Permanent Mission of Israel to the United Nations Office at Geneva of the Panel's intention to hold an on-site inspection of documents and materials to assist in the verification and valuation of its claim. An inspection team composed of members of the secretariat and the expert consultants visited Israel from 22 to 25 May 2000 to clarify questions arising from the review of the claim.

8. In the course of the review of the Claims, the Panel noted that some Claimants sought compensation for costs incurred in evacuating individuals,

for payments made to reimburse Government employees, civilians and/or corporations for loss of real and tangible property, and for support payments made to individuals who had lost their source of income as a result of Iraq's invasion and occupation of Kuwait. As the individuals and corporations concerned might themselves have filed claims with the Commission in categories "C", "D" or "E" for the same losses, in order to avoid multiple recovery of compensation across categories, the Panel instructed the secretariat to carry out cross-category checks to ascertain whether there was any duplication of claims. 8/

9. The cross-category checks have not revealed any claims that have been compensated in categories "C", "D" or "E" for the same losses that have been found compensable in this Report. Consequently, no deductions have been made to the Claims.

10. In reviewing the Claims, the Panel held regular meetings at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. In addition, as previously noted, the expert consultants assisted the Panel in the verification and valuation of the Claims.

II. LEGAL FRAMEWORK

11. In its report on part one of the first instalment of "F1" claims, the Panel discussed the legal framework within which it would decide the "F1" claims. 9/ The discussion covered the applicable law, the procedural requirements and evidentiary standard imposed on claimants, and the Panel's role in the proceedings. The Panel's findings concerning the applicable law, procedural requirements and evidentiary standard set out therein are also applicable to the Claims.

III. VERIFICATION AND VALUATION

12. In applying the aforesaid procedural requirements and evidentiary standard to the Claims, the Panel undertook a careful examination of the claim forms, statements of claim and evidence filed by the Claimants as well as the materials submitted by Claimants in their responses to the article 34 notifications. The Panel found that, within many Claims, individual loss elements or portions thereof failed to meet the directness requirement as formulated in paragraph 16 of Security Council resolution 687 (1991), or the Commission's procedural requirements set out in the Rules, or the evidentiary standard also provided for in the Rules. In such cases, the Panel recommends that compensation should not be awarded.

13. With respect to the loss elements that the Panel considered compensable in principle, the Panel proceeded to verify that the losses had, in fact, been sustained and then proceeded to quantify such losses. In addition to verifying that the claimed losses had in fact been sustained, the Panel also considered the reasonableness of the Claimants' conduct and of the amounts claimed. For example, in the case of claims for

costs of evacuation on scheduled flights, the Panel only recommends compensation for one-way economy fares.

14. In some of the Claims, the documentary and other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to support the full amount of the claimed loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel considered the level and type of evidence that should reasonably be required of a claimant given the circumstances prevailing at the time of the losses, particularly for those losses sustained in Iraq and Kuwait, and received advice from the expert consultants. 10/

15. In determining the recommended awards, the Panel adopted general principles of loss adjustment, such as reasonableness of costs incurred, depreciation and betterment. For example, in claims for lost or damaged property, the age and use of the property at the time the loss or damage occurred was taken into account and deductions were made where appropriate.

IV. COMMON LEGAL ISSUES

16. As in previous instalments, the Claims give rise to a number of common legal issues. In addressing these common issues, the Panel has formulated and applied certain principles that are set out below.

A. Supplements or amended claims

17. The Governing Council has determined that, with the exception of environmental claims, no category "F" claims will be accepted for filing under any circumstances after 1 January 1997 and unsolicited supplements to previously filed claims in category "F" will not be accepted after 11 May 1998. 11/ In view of these determinations, the Panel finds that new claims submitted after 1 January 1997 - be they for new loss types or additional loss elements - are not admissible as they are time-barred. Further, information or documentation submitted in response to article 34 notifications or procedural orders, or received by way of unsolicited supplements delivered to the Commission after 11 May 1998, cannot increase the amount claimed.

B. Losses outside Kuwait or Iraq

18. Security Council resolution 687 (1991) refers to "any direct loss or damage" resulting from Iraq's invasion and occupation of Kuwait, but does not expressly indicate where such direct loss or damage should have occurred. Moreover, the decisions of the Governing Council do not limit the Commission's jurisdiction in terms of the place where the direct loss or damage was suffered. 12/ The Panel finds that there is no jurisdictional limitation, in principle, to the award of compensation for losses sustained outside Kuwait or Iraq. 13/

C. Military operations and threat of military action

19. The Panel considers that, given the nature of the Claims, the facts supporting many of the losses allegedly sustained outside Kuwait or Iraq are such that, in order for them to meet the requirement of directness, it must be demonstrated that they fall within the ambit of paragraph 34(a) of Governing Council decision 7, which provides as follows:

> "34. These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991". 14/

20. The Panel has previously considered the meaning of paragraph 34(a). In the First Report, in the context of a Government's claim for evacuation costs of its citizens (primarily diplomats and their families) from countries other than Iraq and Kuwait, the Panel decided that a direct link can be shown where "actual military operations" or "an actual - as opposed to speculative - threat of military action" existed against the country from which individuals were evacuated. 15/ The Panel further stated, concurring with the "C" Panel, that a claim based upon an incident occurring outside Iraq or Kuwait needs to be more fully substantiated in order to establish the necessary causal link between Iraq's invasion and occupation of Kuwait and the alleged loss. 16/

21. In considering the issue, this Panel took account of, inter alia, the range and use of Iraqi Scud missiles during the period of Iraq's invasion and occupation of Kuwait, and the location of military operations conducted by either Iraq or the Allied Coalition Forces in countries other than Iraq and Kuwait. Based on its investigation, the Panel found that military operations or the threat of military action were directed against Saudi Arabia and Israel, in addition to Kuwait and Iraq. The Panel therefore decided that "the costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait". The Panel did not, however, recommend an award of compensation for costs of evacuating individuals from other countries in the Middle East, including Turkey, Iran and Syria. 17/

22. The "F2" Panel has also considered the meaning of paragraph 34(a) of Governing Council decision 7. In its first report, the "F2" Panel determined that, even though a State may not have been the subject of military operations or a threat of military action, an award of compensation may still be made in exceptional circumstances where military operations in Iraq or Israel could have had effects that spilled over and caused damage in an immediately adjacent land territory. 18/

D. Military costs

23. Governing Council decision 19 provides that "the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". 19/ At its eighty-first meeting on 30 September 1998, the Governing Council concluded that claims for military costs of States that were not members of the Allied Coalition Forces are not eligible for compensation by the Commission.

24. The Panel finds that the costs of a claimant's preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait fall within the scope of Governing Council decision 19 and are therefore not eligible for compensation. The Panel further finds that the costs of a State's military response to Iraq's invasion and occupation of Kuwait, regardless of whether or not the State was a member of the Allied Coalition Forces, are military costs as contemplated by the Governing Council. 20/

25. The Panel considers that the fact that a claimant is a military entity, while a factor to be considered, is not determinative of the question of whether an asserted cost is a "military cost". Rather, the Panel must also examine the nature of the activity in respect of which the cost was incurred and the purpose of that activity. In this regard, the Panel finds that claims for protective measures undertaken by military entities are compensable, in principle, if those measures were for the benefit of the civilian population and are normally carried out in other countries by civilian entities.

E. Payments made or relief provided by Governments

26. A number of the Claimants seek compensation for payments made or relief provided to others. Paragraph 36 of Governing Council decision 7 provides that compensation is, in principle, available "to reimburse payments made or relief provided by Governments or international organizations to others ... for losses covered by any of the criteria adopted by the Council."

27. The Panel considers that the effect of this provision is to make compensable claims for payments made or relief provided by Governments in respect of losses for which the recipient would have been otherwise entitled to file a claim before the Commission, to the extent that the underlying losses are compensable in accordance with the criteria developed by the Commission. However, where the claims are for relief contributions made by Governments to intermediaries such as international organizations or other entities, the Panel considers that additional requirements must be met.

28. In the Fifth Report, the Panel noted, *inter alia*, that specific and non-regular relief contributions made by Governments are compensable,

pursuant to paragraph 36 of Governing Council decision 7, where three conditions are met. 21/ First, the purpose of the contribution must be to respond to a state of necessity in the form of a specific and urgent need that resulted directly from Iraq's invasion and occupation of Kuwait. Second, the contribution must have been for losses that are covered by any of the criteria adopted by the Governing Council. Third, the contribution must have been actually used to respond to the specific and urgent need. The Panel considers that the same requirements and conditions are applicable to the Claims.

F. Currency exchange rates

29. Some of the Claimants have sustained losses or stated their claims in currencies other than USD. Since the Commission issues awards in USD, the Panel is required to determine and to apply the appropriate rates of exchange. The Panel has consistently determined that applying the currency exchange rates as at the date of loss is the most appropriate method of calculating the applicable exchange rates. 22/

30. The Panel notes that the majority of the losses claimed in this instalment occurred quite regularly throughout the period of Iraq's invasion and occupation of Kuwait. However, in general, it is not possible to identify the precise date of their occurrence. Therefore, the Panel considers 16 November 1990, the mid-point of the invasion and occupation period, to be the most appropriate date for determining the applicable exchange rates in connection with the Claims, except as specified in the paragraph below.

31. The Panel considers that the rates of exchange used by the Government of the State of Israel ("Israel") to convert their losses sustained in new Israeli shekels ("NIS") into USD amounts represent reasonable approximations of the applicable market exchange rates prevailing at the relevant times. Therefore the Panel does not need to adopt a different exchange rate.

32. In calculating the rates of exchange used as at 16 November 1990 for currencies other than NIS, the Panel has, in accordance with previous practice, adopted and used the monthly exchange rates as reported in the *United Nations Monthly Bulletin of Statistics* of April 1991.

G. Interest

33. Certain of the Claims include a claim for interest on the principal amount claimed. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will

be paid after the principal amount of awards". 23/ Thus, the Panel needs only to set the date from which interest will run.

34. The Panel determines that, for the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates for losses in currencies other than NIS, this same date should be used for calculating interest. However, with regard to the claim of Israel, the Panel finds that the losses for which compensation is sought by the Ministry of Finance occurred between 18 January and 25 February 1991. The Panel therefore determines that 6 February 1991, the mid-point of this period, is the appropriate date from which interest should run for the compensable losses of Israel's Ministry of Finance. 24/

35. Accordingly, 16 November 1990 is the date from which interest should run in respect of all compensable claims in this instalment other than that of Israel's Ministry of Finance, for which 6 February 1991 is the date from which interest should run.

H. Classification of loss types

36. The standard claim form for category "F" claims contains the following loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage; depletion of natural resources; and other. 25/ In the first instance, Claimants classified their losses pursuant to these loss types. On a number of occasions, after reviewing the Claimants' contentions and supporting documents, the Panel has considered it more appropriate to review a particular loss under a different loss type. The Claims are discussed below as reclassified.

V. THE CLAIMS

A. The Federal Republic of Germany

37. The Claim submitted by the Government of the Federal Republic of Germany ("Germany") includes claims for:

a. Costs allegedly incurred in evacuating and relocating Germany's nationals, including its diplomatic staff, from Iraq and Kuwait and other countries in the Persian Gulf area in response to Iraq's invasion and occupation of Kuwait;

b. Reimbursements to nationals for personal property lost as a result of Iraq's invasion and occupation of Kuwait;

c. Reimbursements of certain salary payments and subsistance allowances;

d. Damage to property belonging to Germany; and

e. Humanitarian relief contributions made to international organizations and other entities.

1. Ministry of Foreign Affairs (UNCC Claim No. 5000105)

38. Germany's Ministry of Foreign Affairs (the "Claimant") originally sought compensation for six loss types, reclassified by the Panel as contract, real property, other tangible property, payment or relief to others, evacuation costs, and other, in the total amounts of DEM 204,771,954 and USD 509,000. However, by way of its article 34 response filed in September 1999 and a supplemental response filed in March 2000, the Claimant increased the total amount of DEM claimed to 223,417,784. The admissibility of these amendments to the quantum of the Claim is considered below in the discussion of the various loss types.

(a) Contract

(i) Facts and contentions

39. The Claimant originally sought compensation in the amount of DEM 1,414,887 for reimbursements that it allegedly made to diplomatic staff whose household goods were lost or damaged in Iraq and Kuwait. The reimbursements were made pursuant to statutory regulations governing the employment contracts of German diplomatic staff.

40. In its September 1999 response to the article 34 notification, the Claimant increased the amount of its claim for household goods reimbursements to DEM 1,641,909. In its supplemental response, however, the Claimant explained that in some cases it had sold the household goods of staff members in 1992 and used the proceeds to pay various Embassy expenditures. The Claimant therefore adjusted the "actual damage amounts" claimed for household goods reimbursements to DEM 1,415,341.

41. The Claimant also originally sought compensation in the amount of DEM 1,772,778 for "removal expenses" allegedly paid to or on behalf of its diplomatic staff evacuated from Iraq and Kuwait. The "removal expenses" consisted of the cost of shipping household effects out of Iraq and Kuwait following the liberation of Kuwait, and the cost of "rent compensation" paid in respect of diplomatic staff who incurred "double rent charges both inside and outside the crisis area". In its response to the article 34 notification, the Claimant increased the amount claimed in respect of "removal expenses" to DEM 1,868,302.

42. In its statement of claim, the Claimant also asserted that "[i]n the period from August 1990 to March 1991, compensation prescribed by pay regulations in the form of danger pay, rent compensation (rent for accommodation no longer used) and separation allowance (separation from family) was paid to the staff of the Embassies in Kuwait and Baghdad in the amount of DM 1,630,000.00". The Claimant stated that "[a]s of August 1990, the staff of the Embassies in the Gulf region, apart from Kuwait and Iraq, received danger pay as prescribed by law totalling DM 801,750.00". In its response to the article 34 notification, however, the Claimant noted that payments totalling only DEM 1,346,022 were made to German diplomatic staff "stationed in the Gulf region and the Mediterranean" in respect of rent compensation (DEM 694,122), separation allowance (DEM 351,986) and danger pay (DEM 299,914).

(ii) Analysis and valuation

43. The Panel finds that, in accordance with the principles set out in paragraph 17 above, the Claimant is not permitted to increase the amounts claimed by way of the article 34 claim development process. However, the Claimant's reduction to the original amount claimed in respect of rent compensation, separation allowance and danger pay is admissible. Therefore, the amount claimed in respect of contract losses is limited to DEM 4,533,687.

44. With regard to the claim for reimbursements paid to diplomatic staff whose household goods were lost or destroyed in Iraq and Kuwait, the Panel notes that in the Fourth Report it considered similar claims for indemnification made in respect of personal property losses. The Panel found such claims to be compensable, provided they were adequately supported by documentary and other appropriate evidence. 26/ The Panel determines that the same approach is applicable here and that, to the extent that they are supported by sufficient evidence, the household goods reimbursements are compensable, with appropriate adjustments for depreciation.

45. With regard to the claim for "removal expenses", the Panel determines that the cost of shipping household effects from Iraq following the liberation of Kuwait was a reasonable expense incurred in mitigating damage resulting from Iraq's invasion and occupation of Kuwait. Accordingly, this

cost is compensable, to the extent that it is supported by sufficient documentary and other appropriate evidence. 27/

46. The Panel finds, however, that the cost of shipping household effects from Kuwait after its liberation is not compensable. After Kuwait's liberation, the household effects in Kuwait were, in contrast to those in Iraq, no longer in jeopardy of being lost, damaged or destroyed, and therefore the cost of shipping them from Kuwait at that time was, in the Panel's view, an expense already provided for in the normal course of diplomatic relations.

47. Regarding the claims for "rent compensation" and "separation allowance" paid to Government officials and family members, the Panel notes that it has previously found that analogous subsistence allowances paid to such persons after their arrival in their home State are not compensable since they represent "payments for ongoing ordinary living expenses ... incurred after a person has left the region". 28/ For the same reason, the Panel finds that the claims for rent compensation and separation allowance payments are not compensable.

48. With regard to "danger pay", the Panel recalls that in its Fifth Report it considered a Government's claim for, inter alia, employee overtime and danger pay, that it incurred to operate its diplomatic and consular posts in Kuwait, Iraq, Saudi Arabia, Israel and Bahrain during the period from 2 August 1990 to 2 March 1991. The Panel found that the Government had incurred the employee overtime and danger pay expenses in the exercise of its "protective functions in times of emergency" and that the expenses were not therefore of such an extraordinary nature as to warrant their compensability. 29/ The Panel considers that the same reasoning is applicable here, and that, accordingly, the claims for danger pay are not compensable.

(iii) Recommendation

49. The Panel recommends an award in the amount of USD 889,564 (DEM 1,338,794) for contract losses.

(b) Real property

(i) Facts and contentions

50. The Claimant seeks compensation in the amount of DEM 202,653 for the costs it allegedly incurred in repairing damage caused to the security entrance, pavement and roller shutters of the chancery building at the German Embassy in Kuwait. It is asserted that Iraqi troops repeatedly occupied the Embassy's chancery during the period of Iraq's invasion and occupation of Kuwait, and that the damage was sustained in the course of such occupation.

(ii) Analysis and valuation

51. The Panel considers that the Claimant has established a causal link between the damage at its Embassy in Kuwait and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that the claimed repair costs are compensable to the extent that they are reasonable and are supported by sufficient documentary and other appropriate evidence. In this regard, the Panel finds that the Claimant has provided sufficient evidence to support only part of the amount claimed.

(iii) Recommendation

52. The Panel recommends an award of USD 2,814 (DEM 4,235) for real property losses.

(c) Other tangible property

(i) Facts and contentions

53. The Claimant originally sought DEM 54,068 as compensation for "cipher machines" and related items of equipment that allegedly "had to be rendered unserviceable for security reasons" on 23 August 1990 by its staff in connection with the evacuation of the German Embassy in Kuwait. However, in its response to the article 34 notification, the Claimant stated that total damages amounted to DEM 48,688.

(ii) Analysis and valuation

54. In its Fifth Report, the Panel considered a claim for the replacement value of communications equipment disabled by diplomatic staff for security reasons prior to the closure of a Government's missions in Kuwait and Iraq. The Panel found that, since the diplomatic staff were unable to protect the communications equipment in Kuwait and Iraq from damage or capture during the period of Iraq's invasion and occupation of Kuwait, the causal link between the Government's communications equipment losses and Iraq's invasion and occupation of Kuwait had been established. 30/

55. The Panel considers that this reasoning is applicable here. Accordingly, the Panel finds that, to the extent that the claim is supported by sufficient documentary and other appropriate evidence, it is compensable, adjustment being made for depreciation.

(iii) Recommendation

56. The Panel recommends an award of USD 3,235 (DEM 4,869) for other tangible property losses.

(d) Payment or relief to others

(i) Facts and contentions

57. The Claimant originally sought compensation for "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)" in the total amounts of DEM 196,801,023 and USD 509,000. A list of the specific measures allegedly taken and costs incurred was included in the Claimant's original submission to the Commission. They included the direct provision of food, clothing, medicine, equipment and personnel by Germany, as well as relief contributions made to international organizations and other entities.

58. As part of its response to the article 34 notification, the Claimant submitted an amended list of the measures in respect of which it sought compensation, with amended total costs of DEM 216,436,874 and USD 509,000.

59. The measures appear to have been taken to assist: (1) non-Iraqi persons who left Iraq or Kuwait during or after the period of Iraq's invasion and occupation of Kuwait; and (2) Iraqi Kurds and other Iraqi refugees who left or sought to leave Iraq after the period of Iraq's invasion and occupation of Kuwait.

60. The Claimant also originally sought DEM 98,909 as compensation for "[e]vacuation costs (medicine, food, NBC protection equipment)" and DEM 26,747 as compensation for "[e]vacuation and ancillary costs for hostages from Iraq" (respectively, the "Protection claim" and the "Care claim"). In its response to the article 34 notification, the Claimant explained that costs totalling DEM 98,909.06 were incurred for "[m]edicines for German citizens in Iraq [DEM]35,157.48", "[f]ood for German community in Iraq [DEM]2,320.00" and "ABC protective gear including ABC antidotes and batteries for children of German communities in Abu Dhabi, Amman, Damascus, Doha, Dubai, Manama, Riyadh and Tel Aviv [DEM]61,431.58". The Claimant further stated that, with respect to the Care claim, costs totalling DEM 31,855.46 were incurred for "[w]inter clothing for German hostages in Iraq [DEM]26,463.00" and "[m]aterial for the care of German hostages in Iraq (e.g. short-wave radios, books) [DEM]5,392.46".

(ii) Analysis and valuation

61. The Panel finds that, in accordance with the principles set out in paragraph 17 above, the increased claim amounts for the "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)" submitted by the Claimant in its response to the article 34 notification are time-barred. Similarly, the Panel finds that the Claimant's increase of the amount of the Care claim from DEM 26,747 to DEM 31,855 is also time-barred.

62. With regard to the claim for the "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)", the Panel finds

that the compensability of each of the measures is to be determined in accordance with the considerations and requirements set forth in paragraphs 26-28 above. The following additional considerations are also applicable to these claims:

(a) Assistance or relief provided to assist Kurdish and other Iraqi refugees who fled Iraq after 2 March 1991 is not compensable, since such exodus of refugees was not a direct result of Iraq's invasion and occupation of Kuwait; 31/ and

(b) If the assistance or relief does not relate to a loss which occurred during the period of Iraq's invasion and occupation of Kuwait or a reasonable period immediately thereafter, then, absent an adequate explanation from the Claimant regarding the directness of the loss, such assistance or relief is not compensable. 32/

63. The Panel therefore determines that the claim for "[c]osts involved in granting humanitarian emergency and refugee assistance (Kurd aid)" is compensable only to the extent that the measures and costs concerned (1) satisfy the conditions and requirements set forth in paragraphs 26-28 above; (2) are not of the sort referred to in subparagraphs 62(a) and (b) above; and (3) are supported by sufficient documentary and other appropriate evidence.

64. With regard to the Protection claim and the Care claim, the Panel considers that, in accordance with reasoning expressed in the Third and Fourth Reports, claims for the costs of safety measures taken by Governments for the protection of individuals and property are compensable, provided that the safety measures constitute a reasonable form of protection and were taken in Iraq, Kuwait, Israel or Saudi Arabia. 33/ The Panel also considers that, consistent with its findings in the First Report, "temporary and extraordinary" living expenses that result from individuals' inability to leave Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 are a direct result of Iraq's invasion and occupation of Kuwait. 34/

65. The Panel therefore finds that, to the extent they satisfy the requirements referred to in paragraph 64 above and are supported by sufficient documentary and other appropriate evidence, the Protection claim and the Care claim are compensable.

(iii) Recommendation

66. The Panel recommends an award in the amount of USD 3,366,803 (DEM 5,067,039) for payment or relief to others.

(e) Evacuation costs

(i) Facts and contentions

67. The Claimant seeks DEM 109,925 as compensation for evacuation costs allegedly paid to and/or on behalf of its diplomatic staff and their families who were evacuated from Kuwait and Iraq after 2 August 1990. The evacuation costs, which included transportation costs, unaccompanied luggage costs and daily and overnight accommodation allowances, were paid by the Claimant pursuant to statutory regulations governing the employment contracts of German diplomatic staff.

68. The Claimant also seeks DEM 366,956 as compensation for the costs it allegedly incurred to evacuate its diplomatic staff and their families from Abu Dhabi, Amman, Damascus, Doha, Manama, Riyadh and Tel Aviv in accordance with a "crisis plan to protect lives".

69. Additionally, compensation in the amount of DEM 950,171 is sought for the costs the Claimant allegedly incurred to evacuate both German and foreign nationals on six flights from Baghdad, Riyadh and Amman. 35/ These flights took place during September and November 1990, and January 1991.

(ii) Analysis and valuation

70. In the First and Third Reports, the Panel established a number of principles governing the compensability of claims for evacuation costs. 36/ The Panel determined, inter alia, that costs incurred by Governments in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia during the period 2 August 1990 to 2 March 1991 are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence. The Panel also determined that compensation should be awarded for costs incurred for necessities such as transport, accommodation, food and urgent medical treatment provided to evacuees, as well as for the costs of transporting the evacuees' baggage.

71. The Panel finds that the majority of the Claimant's evacuation costs fall within these principles. The evidence does not, however, support the full amount claimed. For example, the Panel notes that, in its response to the article 34 notification, the Claimant answered a request for invoices or other primary documents evidencing the costs allegedly incurred to evacuate diplomatic staff from Riyadh and Tel Aviv by stating that such documents "are not available".

(iii) Recommendation

72. The Panel recommends an award in the amount of USD 641,884 (DEM 966,035) for evacuation costs.

(f) Other

(i) Facts and contentions

73. The Claimant seeks DEM 542,087 as compensation for various losses and damage sustained by German schools in Kuwait, Baghdad, Riyadh, Abu Dhabi and Cairo, and by "cultural institutions" in Israel "[i]n connection with the invasion of Kuwait by Iraqi troops". The Claimant is claiming for:

a. Reimbursement of personal property, salary and rent losses sustained by teachers and administrative officials employed at the German schools and cultural institutions;

b. Reimbursement of travel and relocation expenses incurred by teachers and administrative officials;

c. Damage and destruction of school property in Kuwait; and

d. Loss of school fees and other income.

74. The claim for rent losses is in respect of a DEM 25,000 rent deposit that was retained and used by a teacher's landlord in Kuwait to set-off rent not paid by the teacher during her absence from Kuwait after 1 August 1990. The Claimant effectively reimbursed the teacher in October 1992 for the loss of her rent deposit by waiving the repayment of DEM 25,000 owed by the teacher on a loan granted to her by the Claimant in May 1990.

(ii) Analysis and valuation

75. With respect to the claim for reimbursements for personal property losses, the Panel considers that the principles and guidelines set out in paragraph 44 above are applicable. Therefore, to the extent that they are supported by sufficient evidence, the personal property reimbursements are compensable, with appropriate adjustments for depreciation.

76. With respect to the claims for reimbursements for salary losses, the Panel finds that the Claimant did not provide sufficient evidence in support of these claims to permit the Panel to verify or quantify the losses claimed. Consequently, these claims are not compensable.

77. With respect to the claim for rent losses, the Panel finds that the Claimant's reimbursement of the teacher's rent deposit constituted an ex gratia payment for a loss that was not a direct loss resulting from Iraq's invasion and occupation of Kuwait. As such, the claim for rent losses is not compensable.

78. The Panel considers that the claims for reimbursements of travel and relocation expenses incurred by the teachers and administrative officials employed at the German schools and cultural institutions are compensable, to the extent that they fall within the principles for the compensability of evacuation costs discussed in paragraph 70 above.

79. With regard to the claims for damage and destruction to school property in Kuwait, the Panel finds that the Claimant did not provide sufficient evidence to permit it to verify or value the losses claimed. Consequently, these claims are not compensable.

80. The Claimant was unable to provide any evidence in support of all but one of its claims for the loss of school fees and other income. The one exception concerned the German school in Abu Dhabi, where nine families were refunded school fees for the period from February to April 1991. The Panel finds, however, that since this loss of school fees was sustained in a geographic area that it has not found to be subject to military operations or threat of military action, it is not compensable.

(iii) Recommendation

81. The Panel recommends an award of USD 27,528 (DEM 41,430) for other losses.

2. Recommendation for the Federal Republic of Germany

82. Based on its findings regarding the Claim of the Federal Republic of Germany, the Panel recommends compensation in the amount of USD 4,931,828.

Table 2. Recommended compensation for the Federal Republic of Germany

Loss type	Review amount 37/ (original currency) (DEM)	Review amount (USD)	Recommended compensation (USD)
Contract	4,533,687	2,902,489	889,564
Real property	202,653	129,739	2,814
Other tangible property	48,688	31,170	3,235
Payment or relief to others	196,926,679 and USD 509,000	126,582,418	3,366,803
Evacuation costs	1,427,052	913,606	641,884
Other	542,087	347,047	27,528
Total	203,680,846 and USD 509,000	130,906,469	4,931,828

B. The State of Israel

83. The Claim submitted by Israel (the "Claimant") includes claims for:

a. Costs allegedly incurred for reimbursing real and tangible property damage caused by Scud missile attacks launched by Iraq in January and February 1991;

b. Costs incurred in respect of Israel's military response to Iraq's invasion and occupation of Kuwait; and

c. Costs incurred to implement precautionary and protective measures in Israel during the period of Iraq's invasion and occupation of Kuwait.

1. Consolidated Claim (UNCC Claim No. 5000062)

84. The Claimant seeks compensation totalling USD 1,059,300,000 38/ for costs incurred by three Government ministries: the Ministry of Finance (USD 103,000,000); the Ministry of Defence (USD 909,000,000); and the Ministry of Health (USD 47,300,000). The claims of the three ministries, as reclassified by the Panel, are addressed in turn below.

85. On its claim form, the Claimant acknowledged that it had received a grant of USD 650,000,000 from the Government of the United States of America ("United States") in May 1991. The Panel's consideration of the grant is discussed below, following its review of the claims of the three ministries.

(a) Ministry of Finance

(i) Payment or relief to others

a. Facts and contentions

86. The Ministry of Finance (the "MOF") seeks compensation in the amount of USD 103,000,000 39/ for reimbursement of payments that were made from its Property Tax Compensation Fund (the "Tax Fund") to persons who suffered real and tangible property damage as a result of Iraqi Scud missile attacks. According to the MOF, Iraq launched a total of 3[illegible] Scud missiles against the territory of Israel during the period 18 January to 25 February 1991, resulting in damage to the structure and contents of thousands of buildings in Israel.

87. The Property Tax and Compensation Fund Law 40/ (the "Fund Law"), passed in 1961, established a programme and fund for the payment of real and personal property damage arising from, inter alia, "war damage", defined as "damage caused to the substance of a property as a result of warlike operations by the regular armies of the enemy or as a result of other hostile acts against Israel or as a result of warlike operations by the Israel Defence Forces". The funding for the payments was derived from

property taxes levied against landowners in Israel and deposited each year into the Tax Fund pursuant to the Fund Law.

88. In accordance with the provisions of the Fund Law, and immediately following the first Scud missile attacks, the MOF began to administer a compensation scheme that assessed, processed and paid the "war damage" claims of Israelis whose homes and chattels had been damaged or destroyed by Iraqi Scud missiles. Claims were required to be filed within one month of the date on which the Scud missile damage occurred. Officials of the Tax Fund, with the assistance of loss adjusters and surveyors, were then required to make expedited decisions in each case regarding the right to compensation under the Fund Law, the repair of the damage and the amount of compensation.

89. The payments from the Tax Fund were made either directly to individual claimants to repair or replace their property or to contractors appointed by the Tax Fund to reconstruct or repair damaged property. According to the MOF, all payments made directly to individual claimants included Israel's value added tax ("VAT"), the rate of which was set at 18 per cent during 1991; however, VAT was not included in payments made directly to contractors.

90. In support of its claim, the MOF provided computer-generated lists detailing more than 15,000 payments that were allegedly made from the Tax Fund to or on behalf of individual claimants who suffered property damage as a result of Iraqi Scud missile attacks. The MOF also provided copies of the Fund Law and its regulations, relevant pricing indexes, representative claim files and contemporaneous photographs of damaged areas.

b. Analysis and valuation

91. The Panel considers that each of the individuals or entities who suffered real or tangible property damage in Israel as a result of Iraqi Scud missile attacks could have filed a claim before the Commission for that damage under categories "C", "D" or "E". The Panel also considers that each such claim would be compensable in principle pursuant to paragraph 34(a) of Governing Council decision 7. Accordingly, the Panel finds that, for the reasons set out in paragraphs 26-28 above, the claim for reimbursement of payments made from the Tax Fund to persons who suffered real or tangible property damage as a result of Iraqi Scud missile attacks against Israel is compensable in principle.

92. The Panel also finds, however, that while the compensation scheme was reasonable and administered generally in accordance with the Fund Law provisions, the evidence provided by the MOF does not support the full amount claimed. The claim files indicate that, in some instances, repair work to damaged buildings was overpriced, and in other instances that insufficient adjustments were made for depreciation of tangible property. Therefore, the Panel has made an adjustment to the amount claimed.

93. In addition, the Claimant provided no evidence in support of its statement that VAT was not included in the compensation payments made directly to contractors. In the absence of such evidence, an additional adjustment has been made in order to account for VAT.

94. The Panel recognizes that the underlying loss to the Israeli property owners included the property taxes that had already been collected and deposited into the Tax Fund. As such, the Panel has made no adjustment for property taxes received into the Tax Fund. 41/

c. Recommendation

95. The Panel recommends compensation in the amount of USD 69,800,000 to the MOF for payment or relief to others, subject to paragraphs 147 and 150 below.

(b) Ministry of Defence

(i) Public service expenditures

a. Facts and contentions

96. The Ministry of Defence (the "MOD") originally sought USD 910,000,000 as compensation for incremental defence expenditures allegedly incurred as a result of Iraq's invasion and occupation of Kuwait. However, this amount appears to be an arithmetical error on the face of the statement of claim, since the component items total USD 909,000,000 42/. The claim is broken down as follows:

a. Air Force - USD 182,000,000;

b. Intelligence and Early Warning - USD 46,000,000;

c. Ground Forces - USD 201,000,000;

d. Navy - USD 5,000,000;

e. Civil Defence - USD 325,000,000; and

f. Defence expenditures for March and April 1991 - USD 150,000,000.

97. According to the MOD, although Israel was not a member of the Allied Coalition Forces and did not participate in their military response to Iraq's invasion and occupation of Kuwait, the Israeli Defence Forces (the "IDF") entered into an advanced state of alert during this period and initiated or intensified certain "defensive" actions described below. The MOD states that the costs of these actions were primarily covered by budget increases beyond the original or normal budget, with the majority of the costs being incurred in fiscal year 1990, which ended in March 1991.

98. The MOD contends that none of the claimed costs should be considered as military costs. It alleges that the sole purpose of the actions taken

by the IDF and the Civil Defence Authority, a civilian authority which operates in close co-ordination with the IDF, during the period of Iraq's invasion and occupation of Kuwait, was to protect the civilian population of Israel.

99. The MOD also contends that the actions taken by the IDF and the Civil Defence Authority represented a more practical and less costly alternative to the evacuation of the Israeli civilian population from Israel's cities. It asserts that the costs of such an evacuation of the Israeli civilian population would have been compensable under the Commission's guidelines, and therefore the less costly alternative should also be compensable.

100. While the MOD's budgets generally include taxes, the MOD states that "due to several reasons (such as exemption of customs for defence import, tax relief for developing areas, no tax effects of payments to reservists, and the economic situation prevailing at that time), the actual tax paid from the defence budget is relatively low." The MOD estimates that the amount of taxes included in its claim is less than 10 per cent of the claim amount and asserts that the large majority of these taxes were for VAT.

i. Air Force

101. The MOD alleges that the actions of its Air Force intensified based on intelligence analyses regarding the launch of Iraqi ballistic missiles and the penetration of Iraqi aircraft into Israeli airspace. As a result, the Air Force's use of aircraft, flight hours, spare parts, communications equipment, Patriot missile defence batteries, and reserve forces increased significantly during this period, and the Air Force allegedly incurred incremental costs of USD 182,000,000 in respect thereof.

ii. Intelligence and Early Warning

102. The MOD also alleges that the actions of its Intelligence Forces intensified during the invasion and occupation period, and that additional items of equipment, spare parts, communications lines and computerized systems were purchased and used to assist with the early identification of Iraqi missile launches and aircraft penetrations into Israeli airspace. As a result, the Intelligence Forces allegedly incurred incremental costs of USD 46,000,000.

iii. Ground Forces

103. The MOD asserts that the actions of its Ground Forces also intensified. It claims that incremental costs were incurred in the general logistical areas of transportation, communications, training, and construction and fortification of installations, and states that additional items of equipment, ammunition, food and biological-chemical protective equipment were purchased for use by Ground Forces personnel. The MOD also asserts that the Ground Forces increased their utilization of reserve

forces during and as a result of Iraq's invasion and occupation of Kuwait. The Ground Forces allegedly incurred incremental costs of USD 201,000,000.

iv. Navy

104. According to the MOD, its Navy incurred incremental costs of USD 5,000,000 as a result of the actions it undertook to fortify its bases and protect its personnel against conventional and biological-chemical attacks by Iraq. These actions allegedly included the purchase of biological-chemical detection kits and air filtering kits, and the installation of "announcement" and "fire control" systems. The Navy also increased the deployment of its ships in order to protect them from being damaged by Iraqi missile attacks, and expended USD 100,000 to repair the damage caused by an Iraqi Scud missile to the roofs, windows, doors and walls of a number of buildings at a naval base.

v. Civil Defence

105. The MOD further asserts that incremental costs of USD 325,000,000 were incurred by the Civil Defence Authority as a result of the protective measures it undertook during and as a result of Iraq's invasion and occupation of Kuwait. These measures included:

a. Distribution of biological-chemical protective kits (including gas masks and anti biological-chemical injections) to the population in Israel;

b. Rental of warehouse space for protective kit storage;

c. Procurement and maintenance of siren systems;

d. Preparation and maintenance of biological-chemical and conventional shelters;

e. Production and distribution of posters, leaflets and videotapes regarding the usage of biological-chemical protective kits;

f. Establishment of a public information centre;

g. Purchase of fire extinguishing and rescue equipment; and

h. Computerization of protective kit distribution and renewal information.

106. According to the MOD, the Civil Defence Authority also increased its utilization of reserve forces to assist with the implementation of protective measures undertaken during the period of Iraq's invasion and occupation of Kuwait.

107. The Civil Defence Authority claim is based on budget requests received by the MOD at the beginning of 1991. Except for incremental costs

of the reserve forces, the MOD's general calculation of the incremental costs for the Civil Defence Authority claim is based on a comparison of the actual Civil Defence Authority budgets for fiscal years 1990-1994 and the average annual budget of the Civil Defence Authority during fiscal years 1985-1989.

108. According to the MOD, due to budgetary difficulties, the incremental costs were spread over a five-year period from 1990-1994. For example, the MOD states that the costs of replacing gas mask filters and batteries used during the period of Iraq's invasion and occupation of Kuwait were primarily covered in Civil Defence Authority budgets after 1990.

109. The MOD contends that the budget requests it received on behalf of the Civil Defence Authority at the beginning of 1991 are consistent with the "excess" budget utilized by the Civil Defence Authority during the fiscal years 1990-1994. The MOD also contends that the "excess" budget from each of these years represents incremental costs that were incurred as a direct result of Iraq's invasion and occupation of Kuwait. The MOD admits, however, that it is unable to demonstrate that the costs of sirens and shelters in 1992-1994, totalling USD 27,000,000, were "directly related to the crisis", and not merely the result of lessons learned therefrom.

110. With respect to the incremental costs of the reserve forces, the MOD alleges that an additional 434,800 "reserve duty days" were utilized by the Civil Defence Authority in fiscal year 1990 at a cost of USD 76 per reserve duty day. This cost was based on the compensation paid to a reservist for loss of a work day and the cost of providing a reservist with food, transportation and other basic necessities. The MOD multiplied the number of additional reserve duty days by the cost of a reserve duty day in 1990 in order to arrive at the round figure of USD 33,000,000 included in the Civil Defence Authority claim of USD 325,000,000.

vi. Defence expenditures for March and April 1991

111. The MOD states that during March and April 1991, following the liberation of Kuwait, a "certain state of alert" continued within the IDF as concerns of renewed hostilities by Iraq and possible missile launches remained. As a result, the IDF allegedly incurred incremental costs of "approximately" USD 150,000,000 during this two-month period. The MOD asserts that these incremental costs were covered by "internal sources", such as the cancellation of training and the depletion of stocks, but it also states that "it is not possible to give a detailed list of actions and costs" due to the time that has passed.

b. Analysis and valuation

112. Paragraph 34(a) of Governing Council decision 7 provides that any loss, damage or injury suffered by a Government as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" is a direct loss for which Iraq is liable.

However, as noted in paragraphs 23-25 above, claims for "military costs", including those of States that were not members of the Allied Coalition Forces, are not eligible for compensation by the Commission.

113. The Panel finds that the claims for the incremental costs of the Israeli Air Force, Intelligence Forces, Ground Forces and Navy in the total amount of USD 434,000,000 are claims in respect of Israel's military response to Iraq's invasion and occupation of Kuwait. This includes the claim for damage caused to a number of buildings at an Israeli naval base, since the evidence indicates that this naval base was, at the time of the damage, mobilized as part of Israel's military response to Iraq's invasion and occupation of Kuwait. For the reasons stated in paragraphs 23-25 above, these claims constitute claims for military costs and are not, therefore, eligible for compensation.

114. The MOD's assertion that the actions of the IDF and the Civil Defence Authority represented a more practical and less costly alternative to the evacuation of the Israeli civilian population from Israel's cities is not supported by any evidence. Indeed, nothing in the documentation or other evidence submitted suggests that such an alternative was considered by the Claimant during the period of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel finds that no further consideration of this assertion is required.

115. With regard to the USD 150,000,000 claim for incremental costs incurred by the IDF in March and April 1991, the MOD did not, despite a request in the article 34 notification, provide any specific information regarding the nature of these costs. In the absence of such information, the Panel is unable to determine whether any portion of the claim is compensable in principle, nor is it able to verify or value a loss. Consequently, the Panel recommends no award of compensation for this portion of the Claim.

116. With regard to the USD 325,000,000 claim for Civil Defence Authority costs, the Panel has previously decided that claims for the costs of measures undertaken by Governments for the protection of individuals and/or property are compensable, provided that such measures were directly related to Iraq's invasion and occupation of Kuwait, were a reasonable form of protection, and were undertaken in either Iraq, Kuwait, Saudi Arabia or Israel. 43/ The Panel considers that these previous decisions are applicable here and finds that the actions undertaken by the Civil Defence Authority during the period of Iraq's invasion and occupation of Kuwait were, in view of the military operations and threat of military action directed against Israel, reasonable measures taken to protect the lives and property of Israeli nationals. 44/

117. The Panel has previously drawn a distinction between general expenditures and expenditures directly incurred in providing assistance to others. 45/ This reasoning applies to the Civil Defence Authority claim

for incremental reserve forces costs incurred during the period of Iraq's invasion and occupation of Kuwait. These costs are compensable, since reservists participated in the distribution of biological-chemical protective kits and other measures taken to protect the lives and property of civilians.

118. The Panel considers that the evidence establishes that the Claimant incurred incremental Civil Defence Authority costs during the period of Iraq's invasion and occupation of Kuwait. However, the Claimant did not provide sufficient evidence to support the full amount claimed. Therefore, after first deducting the USD 27,000,000 claimed for siren and shelter costs in 1992-1994, the Panel has made appropriate adjustments to account for evidentiary deficiencies.

119. A further adjustment has been applied to the amount of the Civil Defence Authority claim to account for taxes, including VAT, that were eventually collected and remitted back to the Claimant.

c. Recommendation

120. The Panel recommends compensation in the amount of USD 161,200,000 to the MOD for public service expenditures, subject to paragraphs 148 and 150 below.

(c) Ministry of Health

(i) Payment or relief to others

a. Facts and contentions

121. The Ministry of Health (the "MOH") originally sought compensation in the amount of USD 47,000,000 for reimbursement of incremental costs incurred by the health establishment in Israel as a result of precautionary measures mandated in January and February 1991. In December 1997, the MOH increased the total amount of its claim to USD 47,300,000. 46/

122. The MOH asserts that on 16 January 1991, the Supreme Hospitalization Authority, a body established by the MOH that sets hospitalization and health care policy in Israel during times of emergency, issued a number of directives instructing health care workers to be on 24-hour standby and directing hospitals to operate at reduced bed-occupancy rates. The Supreme Hospitalization Authority also issued directives instructing hospitals in Israel to activate their biological-chemical casualty facilities, close outpatient clinics and stop performing elective surgery. The goal of the directives was to ensure that the Israeli health care system would be prepared, if necessary, to absorb large numbers of casualties resulting from Iraqi Scud missile attacks. According to the MOH, the operative "status of alert" period of these directives did not extend beyond 27 February 1991.

123. The MOH asserts that, as a result of the Supreme Hospitalization Authority's directives, various public, private and Government health care institutions in Israel incurred additional operating costs and revenue losses. Following the end of the "status of alert" period, these health care institutions submitted loss reports requesting compensation from the MOH. The MOH, in turn, assessed the reports and compensation requests and allocated reimbursements to the institutions. The notifications of reimbursements to be paid to the health care institutions were sent by the MOH in March 1991. The stated reimbursements were less than the costs claimed because, according to the MOH, it had received only a restricted allocation of monies from the MOF for the purpose of compensation. The MOH seeks compensation from the Commission only in respect of the reimbursements that were paid to health care institutions.

124. The MOH asserts that Government-operated hospitals were reimbursed in total amounts as follows:

a. USD 14,700,000 for incremental "manpower" (i.e., overtime and standby pay) costs incurred during the "status of alert" period;

b. USD 7,600,000 for income losses sustained as a result of reduced bed-occupancy and therefore reduced billings during the "status of alert" period;

c. USD 2,100,000 for incremental operating costs, including costs incurred to activate biological-chemical casualty facilities and seal rooms against biological-chemical warfare during the "status of alert" period; and

d. USD 300,000 for costs incurred to operate childcare facilities for the children of hospital staff who had to work overtime.

125. The MOH also asserts that Government-operated psychiatric hospitals were reimbursed USD 1,200,000 for incremental operating costs incurred during the "status of alert" period; that Government-operated community centres were reimbursed USD 300,000 for incremental costs they incurred in providing additional psychiatric services to persons with anxiety; and that Government-operated geriatric centres were reimbursed for income losses and incremental operating costs incurred during the "status of alert" period in the amount of USD 1,900,000.

126. Incremental operating costs totalling USD 1,300,000 were also allegedly incurred by and reimbursed to public medical institutions, such as the Hadassah Medical Center and Magen David Adom, as well as private medical institutions. In addition, the MOH alleges that the Clalit Sick Fund, a non-government health insurance and medical care provider in Israel, incurred and was reimbursed for incremental "manpower" costs, operating costs and drug procurement costs totalling USD 5,400,000.

127. The MOH asserts that Israel's Emergency Services Division, which assists in emergency and security matters in Israel, "had to increase the extent of its activity during the time of the war, including the extent of manpower employed". As a result, the MOH allegedly reimbursed the Emergency Services Division in an amount of USD 200,000 for incremental operating costs.

128. The MOH asserts that it purchased large quantities of special equipment and medications capable of treating casualties of biological-chemical attacks. Although the MOH states that there was ultimately no need to use these purchases, it also asserts that "they could not be used for any other purpose after the war, and after a time were all time-expired and had to be destroyed". The MOH seeks USD 8,000,000 as compensation for the cost of the special equipment and medications.

129. Finally, the MOH asserts that following the liberation of Kuwait, legal proceedings were commenced by Israeli health care workers demanding compensation for the overtime work they had performed during the "status of alert" period. These legal proceedings were settled in May 1991. Pursuant to the terms of the settlement agreement, the MOH was required to compensate health care workers for their "emergency period work". The MOH asserts that it paid a total of USD 4,300,000 pursuant to the terms of this settlement. The MOH did not, however, explain whether this claim overlaps with the USD 14,700,000 claim for incremental "manpower" costs incurred by Government-operated hospitals.

b. Analysis and valuation

130. The Panel considers that, as discussed in paragraphs 26-28 above, the effect of paragraph 36 of Governing Council decision 7 is to render compensable claims for payments made by Governments in respect of losses for which the recipients themselves would have been entitled to file a claim before the Commission, to the extent that the underlying losses satisfy the directness requirement.

131. The Panel also considers that the precautionary measures undertaken during the period of Iraq's invasion and occupation of Kuwait to ensure that the Israeli health care system would be ready, if necessary, to absorb large numbers of victims of Iraqi missile attacks were reasonable. The Panel therefore finds that the reimbursements allocated by the MOH to Israeli health care institutions in respect of the costs they incurred as a result of the Supreme Hospitalization Authority directives are compensable in principle.

132. The Panel finds, however, that the evidence provided by the MOH does not permit it to determine whether the relevant Israeli health care institutions actually incurred all of the underlying costs in respect of which the MOH allocated reimbursements, or whether all such costs were in fact incremental. In addition, the MOH failed to provide proof of payment for many of the reimbursements and other costs for which it is seeking

compensation. Accordingly, the Panel has made adjustments to account for these evidentiary deficiencies.

c. Recommendation

133. The Panel recommends compensation in the amount of USD 26,600,000 to the MOH for payment or relief to others, subject to paragraphs 149 and 150 below.

(d) Other compensation or recovery

(i) Facts and contentions

134. The category "F" claim form asks whether the Government or international organization has received any compensation, whether in funds or in kind, from any source. If the answer to this question is in the affirmative, the claim form requests that the Government or international organization attach a separate statement that lists the amount and source of compensation and indicates with respect to which loss or losses such compensation was received.

135. On its claim form, the Claimant acknowledged that it had received compensation from another source. In an appendix attached thereto, the Claimant stated that:

> "In May 1991 the US Government has granted the State of Israel an amount of USD 650 million to cover the following estimated losses:

	USD million
- Additional Defense Expenditures	500
- Property Tax Compensation Fund	100
- Additional costs to Health Establishment	50
TOTAL	650

136. The article 34 notification requested that the Claimant indicate whether the grant total had been deducted from the amount of the Claim, explain the reason for the grant and provide documents evidencing payment of the grant. In response, the Claimant provided a document titled "US Grant to Israel in Connection with the Gulf War" which stated, in part, that:

> "The contention of Israel is that the US grant was given on a wide basis of the social, economic, and political needs of Israel at the time in which the crisis occurred. The calculation of the grant in relation to the specific items of expenditure (outlined in Appendix 2 to Israel's claim form) was made merely in order to arrive at some final figure, while still recognising that Israel's expenses were much greater, and the grant as a whole may go towards covering the overall Israeli expenses."

137. In a supplemental response, the Claimant stated that, though the global sum of the grant was calculated on the basis of certain expenses as outlined in the appendix to the original claim, the grant was intended to cover "the general financial burden that resulted from the war". The Claimant asserted further that, as with other grants from the United States, the "funds were put into ESF (Economic Support Fund) account in the Bank of Israel, and were credited to the general revenues of the government". The Claimant continued as follows:

> "Needless to mention that the amounts allotted in the expenditure side of the budget in FY 1991/1992 to cover expenses, which were [a] direct result of the Gulf War, were much higher, and were met as the need arose. The majority of these expenses were mentioned in Israel's claim before the Commission."

138. The grant was included in legislation passed in the United States in April 1991. Chapter III of Title I of the "Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991" 47/ (the "Appropriations Act") reads, in part, as follows:

> "For an additional amount for the 'Economic Support Fund', $850,000,000, to provide for additional costs resulting from the conflict in the Persian Gulf, of which $650,000,000 shall be made available only for Israel, ... Provided, That such sums shall be made available on a grant basis as cash transfers and shall remain available for obligation until September 30, 1991: Provided further, That such sums may be used by Israel ... for incremental costs associated with the conflict in the Persian Gulf, notwithstanding section 531(e) of the Foreign Assistance Act of 1961."

139. Section 531(e) of the Foreign Assistance Act of 1961 states that "amounts appropriated to carry out this chapter shall be available for economic purposes and may not be used for military or paramilitary purposes". The fact that waiver of section 531(e) was provided for indicates that the grant could be used for a military purpose.

140. At the request of the Panel, and in order to ascertain the donor's intent, the secretariat requested that the United States provide contemporaneous documents explaining the reason for the grant. In its response, the United States enclosed a number of contemporaneous Senate Committee Reports, House of Representatives Committee Reports and Statements of Administration Policy issued in connection with the passage of the Appropriations Act.

141. According to the United States:

> "The above-referenced documents indicate that the purpose of the cash grant was to provide Israel with 'assistance as reimbursement for the incremental Israeli defense costs of the Gulf War'. (See Statement of Administration Policy (House Rules), March 6, 1991 at p.5; Statement of Administration Policy (House Floor), March 7, 1991 at page 5; and Statement of Administration Policy (Senate Floor), March 19, 1991 at page 19); and further that the cash grant was in response 'to a request from the Government of Israel for assistance in meeting extraordinary defense and related costs arising from the war'. (See Senate Committee Report, 102 S.Rpt. 24, at page 11)."

(ii) Analysis and valuation

142. Paragraph 3.b. of Governing Council decision 13 provides that:

> "When the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories 'C', 'D', 'E' and 'F' has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss." 48/

143. The Panel has previously deducted financial contributions received by a Government from other sources from the total amount of evacuation costs and repatriation relief costs that it would have otherwise recommended for compensation. 49/ These deductions were based on the Panel's findings that each of these financial contributions had been provided to the Government in question in order to offset the same costs (i.e. evacuation and repatriation relief) that the Panel would have otherwise recommended for compensation.

144. Here the Panel finds that both the basis for the Claimant's request for assistance from the United States and the stated purpose of the grant was to cover the Claimant's incremental costs associated with Iraq's invasion and occupation of Kuwait. The Panel also finds that the Claimant received assistance from the United States for the same incremental costs that form the subject of the Claim.

145. The Panel notes that the Claimant, subsequent to its initial statement as to the allocation of the grant, asserted that the grant funds were, upon receipt, credited to its general revenues. However, the Panel finds that the Claimant's initial statement is the best evidence regarding the allocation of the grant.

146. Accordingly, the Panel finds, relying on the Claimant's initial statement, that out of the USD 650 million grant, USD 100 million was

provided to the Claimant to offset the same costs claimed by the MOF, USD 500 million was provided to offset the same costs claimed by the MOD, and USD 50 million was provided to offset the same costs claimed by the MOH. However, not all of these costs have been found by the Panel to be compensable. In accordance with paragraph 3.b. of Governing Council decision 13, the Panel finds that the total amount of the grant should be apportioned between compensable and non-compensable components of the Claim in such a manner that no portion of the grant provided to offset non-compensable costs is deducted from the total amount that the Panel has recommended for compensation.

147. The Panel notes that the total amount of its recommended award for the MOF is USD 69,800,000. This figure is 67.767 per cent of the asserted MOF claim of USD 103 million. Accordingly, 67.767 per cent of the USD 100 million provided to offset the costs claimed by the MOF, which is USD 67,767,000, is the amount that should, in the Panel's view, be deducted from the amount recommended for the MOF.

148. Similarly, the Panel notes that the total amount of its recommended award for the MOD is USD 161,200,000, which is 17.734 per cent of the asserted MOD claim of USD 909 million. Accordingly, in the Panel's view, 17.734 per cent of the USD 500 million provided to offset the costs claimed by the MOD, which amounts to USD 88,670,000, is the amount that should be deducted from the amount recommended for the MOD.

149. With respect to the MOH claim, the Panel notes that the total amount of its recommended award is USD 26,600,000. This is 56.237 per cent of the total amount claimed in respect of the MOH. Therefore, in the Panel's view, 56.237 per cent of the USD 50 million provided to offset the costs claimed by the MOH, which amounts to USD 28,118,500, is the amount that should be deducted from the amount recommended for the MOH.

(iii) Recommendation

150. Based on the foregoing, the Panel recommends that USD 67,767,000 be deducted from the USD 69,800,000 recommended amount for the MOF; that USD 88,670,000 be deducted from the USD 161,200,000 recommended amount for the MOD; and that USD 28,118,500 be deducted from the USD 26,600,000 recommended amount for the MOH.

2. Recommendation for the State of Israel

151. Based on its findings regarding the Claim of the State of Israel, the Panel recommends a total net award in the amount of USD 74,563,000, after deduction of the set-off amounts referred to in paragraph 150 above.

Table 3. Recommended compensation for the State of Israel

Loss type	Review amount (original currency) (USD)	Recommended amount prior to set-off (USD)	Set-off amount [50] (USD)	Recommended compensation (USD)
(a) Ministry of Finance				
Payment or relief to others	103,000,000	69,800,000	67,767,000	2,033,000
(b) Ministry of Defence				
Public service expenditures	909,000,000	161,200,000	88,670,000	72,530,000
(c) Ministry of Health				
Payment or relief to others	47,300,000	26,600,000	26,600,000	nil
Total	1,059,300,000	257,600,000	183,037,000	74,563,000

C. The Syrian Arab Republic

152. The Claims submitted by the Government of the Syrian Arab Republic ("Syria") include claims for:

a. Losses relating to Syria's preparation for, participation in and provision of support in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait;

b. Economic losses allegedly incurred by Syria's Central Treasury and Central Bank, as well as by other entities;

c. Assistance provided to refugees; and

d. Costs incurred to implement precautionary measures during the period of Iraq's invasion and occupation of Kuwait.

1. Central Bank of Syria (UNCC Claim No. 5000123)

(a) Other

(i) Facts and contentions

153. The Central Bank of Syria (the "Claimant") originally sought compensation in the amount of USD 848,000,000 for losses resulting from a decrease in the value of private transfers and remittances into Syria from "Syrian residents of Gulf countries". In its January 1998 response to a notification issued pursuant to article 15 of the Rules, the Claimant reduced its Claim to USD 425,000,000.

154. According to the Claimant, the transfers and remittances of Syrian expatriates are an important element of Syria's balance of payments and, consequently, of the Claimant's foreign currency resources. Following Iraq's invasion of Kuwait, however, many Syrian expatriates residing in Persian Gulf States either returned to Syria or could not transfer income earned abroad back to Syria. As a result, the Central Bank of Syria asserts that it was deprived of part of its anticipated foreign currency resources in each of the years 1990-1994.

155. The amount of the loss allegedly suffered by the Claimant is calculated as the difference between the value of actual private remittances into Syria in each of the years 1990-1994 and the value of private remittances that the Claimant anticipated in each of those years. The calculation is based on the Claimant's own balance of payments data as follows:

Year	Expected transfers (USD)	Actual transfers (USD)	Loss (USD)
1990	500,000,000	385,000,000	115,000,000
1991	550,000,000	350,000,000	200,000,000
1992	600,000,000	550,000,000	50,000,000
1993	650,000,000	600,000,000	50,000,000
1994	700,000,000	690,000,000	10,000,000
Total	-	-	425,000,000

(ii) Analysis and valuation

156. The Claimant was requested in the article 34 notification to explain the precise nature of the financial loss it sustained as a result of the alleged decrease in private transfers and remittances. The Claimant responded by stating that it "prepares the Balance of Payments, and the reduction in the private transfers of Syrians abroad is one of the factors which affects the Central Bank's foreign exchange assets". In the Panel's view, neither this response nor the other information and evidence submitted by the Claimant demonstrates the circumstances and amount of the claimed loss. 51/ In the result, the Panel is unable to determine whether the Claim is for losses sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait, nor is it able to verify or value a loss.

157. The Panel notes that the Claimant refers to a 1991 Note Verbale 52/ addressed to the Secretary-General of the United Nations that includes a reference to "law No. 109 of 1989" that requires every Syrian working abroad to pay a yearly duty to Syria in foreign currency. However, the Claimant did not claim for the loss of such duties, nor did it provide any evidence in support thereof.

(iii) Recommendation

158. The Panel recommends no award of compensation for other losses.

2. Ministry of Defence (UNCC Claim No. 5000126)

(a) Public service expenditures

(i) Facts and contentions

159. The Ministry of Defence (the "Claimant") originally sought USD 1,366,995,121 as compensation for costs incurred due to the participation of Syrian forces in the "Gulf War".

160. In an April 1999 communication, the Claimant stated that it reserves its right to ask for compensation for material damages sustained by its forces as a result of its participation in the "Gulf War" in the amount of USD 1,366,995,121. The Commission was also advised that several committees had been formed by the Claimant "to study the effects on Syrian troops and

equipments which participated in the Gulf and Liberation of Kuwait war because of both the use of Depleted Uranium in shells and ammunitions, and the effects of the burning of Oil fields". The communication stated that the Claimant would "later communicate the estimated value of the material damage with a request for Compensation".

(ii) Analysis and valuation

161. The Claimant was requested in the article 34 notification to explain the nature of the participation of the Syrian forces that forms the basis of the Claim, to indicate whether any portions of the Claim relate to expenditures incurred in activities of a non-military nature carried out by the Claimant, and to provide documentation to substantiate each expenditure in respect of which compensation is sought. The Claimant did not, however, provide a response to the article 34 notification or otherwise provide any explanation or evidence in support of the Claim. The Claimant also failed to communicate the estimated value of or provide any further explanation for a claim for the alleged damage caused to its troops by depleted uranium and burning oil fields.

162. The Panel finds that the Claimant did not provide sufficient evidence to demonstrate the circumstances and amount of the claimed loss. In particular, the Panel is unable to determine whether any portion of the Claim is for non-military direct losses resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no award of compensation for the Claim.

(iii) Recommendation

163. The Panel recommends no award of compensation for public service expenditures.

3. Ministry of Economy and Foreign Trade (UNCC Claim No. 5000127)

164. The Ministry of Economy and Foreign Trade (the "Claimant") originally sought compensation in the total amount of USD 180,000,000. In a December 1996 submission the Claimant increased the total amount of the Claim to USD 185,948,780. In a January 1998 submission the Claimant further increased the total amount of the Claim to USD 188,516,000.

(a) Business transaction or course of dealing

(i) Facts and contentions

165. The Claimant alleges that losses totalling USD 188,516,000 were suffered by the Syrian national economy as a result of a decline in the expected value of Syrian exports to Middle Eastern countries during the period 1990-1991. According to the Claimant, Iraq's invasion and occupation of Kuwait halted the air and road transport of Syrian exports within the Middle East region, thereby causing a sharp decline in Syrian export sales to nearby countries such as Kuwait, Saudi Arabia, Qatar,

Bahrain, United Arab Emirates and Jordan and resulting in a loss of hard currency.

166. The Claimant asserts that the halt in exports deprived the Commercial Bank of Syria of that proportion (generally 25 per cent) of foreign currency which exporters are obligated by Syrian law to exchange at the Commercial Bank of Syria based on the value of their exports.

167. The claimed amount is stated to be the difference between the expected and actual value of Syrian exports to Middle Eastern countries during the period 1990-1991, plus an additional 5 per cent in order to account for the value of commodities that are exported without official customs clearances. The Claimant's calculation of its losses is based on the total decline in the value of Syrian exports, and not merely the corresponding decline in the value of foreign currency exchanges received by the Commercial Bank of Syria.

(ii) Analysis and valuation

168. The Panel considers that the evidence submitted by the Claimant indicates only the value of sales made by individual Syrian exporters during the years 1989-1995, and the amount of foreign currency that was received by the Commercial Bank of Syria as a result of these export sales. The evidence does not demonstrate that the Claimant suffered a loss as a result of a decline in the expected value of exports.

169. Although the Claimant's assertion may be correct that hard currency is necessary for execution of the investment and production plans of Syria as well as to import certain required materials from abroad, the Claimant did not provide any evidence upon which the Panel can verify or value a loss based on the asserted foreign currency losses. Consequently, the Panel finds that the Claim is not compensable.

(iii) Recommendation

170. The Panel recommends no award of compensation for business transaction or course of dealing losses.

4. Ministry of Finance (UNCC Claim No. 5000128)

171. The Ministry of Finance (the "Claimant") seeks compensation in the amount of USD 383,005,161 for losses allegedly sustained by Syria's Central Treasury.

172. In its initial submission to the Commission in 1993, the Claimant sought compensation for, inter alia, "Exports Losses" in the amount of USD 7,620,719 and "Exemption of Kuwaiti Hotel Lodgers" losses in the amount of USD 15,066,666. These losses were not referred to, however, in a 1996 submission, which included an amended claim form and a letter from the Claimant asserting the total losses sustained by the Central Treasury "due to the Gulf Crisis". In this latter submission, the Claimant introduced a

claim for "Other burdens" in the amount of USD 22,687,385, and explained that this claim represented the "value of primary services" provided to refugees from Kuwait.

173. The Panel considers that the claim for "Other burdens" in the amount of USD 22,687,385 has been substituted for the original claims for "Export Losses" and "Exemption of Kuwaiti Hotel Lodgers" losses in the total amount of USD 22,687,385.

(a) Payment or relief to others

(i) Facts and contentions

174. The Claimant seeks compensation in the total amount of USD 233,005,161 for claims for payment or relief provided to others, as described more fully below.

175. The Claimant alleges that in an effort to facilitate the entry into Syria of Syrian and other Arab residents fleeing Kuwait, a "Ministerial Committee" made a number of decisions at a meeting held on 21 August 1990. One of the decisions was to exempt the owners of private passenger cars from paying the "crossing book" fees, road maintenance fees and "extension of stay" fees normally charged in respect of vehicles entering and/or remaining in Syria. In this regard, the Claimant alleges that 35,000 private passenger cars entered Syria from Kuwait during the period 1 August 1990 to 31 March 1991. It further asserts that, based on the average number of cars that entered Syria during the years 1988 and 1989, a further 3,700 private passenger cars that it had expected to enter Syria during this period did not do so due to Iraq's invasion and occupation of Kuwait.

176. The Claimant therefore seeks compensation in the total amount of USD 118,610,750 in respect of the various fees that were "lost" by the Central Treasury on the 35,000 private passenger cars that entered Syria and on the estimated 3,700 that did not. The Claimant states that the "crossing book" fee normally payable for a private passenger car temporarily entering Syria was USD 185. The Claimant did not, however, provide an explanation, evidence or any basis of calculation for the amounts that were normally payable in respect of road maintenance fees and "extension of stay" fees.

177. According to the Claimant, after the liberation of Kuwait and the return to Kuwait of most private passenger cars that had entered Syria during the invasion and occupation, the status of 3,000 private passenger cars that remained in Syria was not regularized and they were therefore considered as "smuggled". The Claimant alleges that duties payable on these private passenger cars, in the average amount of 300,000 Syrian pounds ("SYP") per car, were "lost" by the Central Treasury. The total amount of compensation sought in respect of these lost duties is USD 80,000,000.

178. Another of the decisions made by the Ministerial Committee on 21 August 1990 was to grant temporary entry into Syria, and consequently an exemption of customs duty for shipments of household furnishings and accompanying baggage, for Syrian residents evacuating Kuwait. After the temporary entry period of one year expired, Syria attempted to locate the owners of household furnishings with declared customs values totalling SYP 148,910,000 in order to ensure that the furniture was re-exported or to have the customs duties paid. The Claimant asserts that the owners could not be located, allegedly because they had given false addresses on their customs declarations. The Claimant therefore seeks compensation in the amount of USD 9,927,382 for the foregone customs duties lost by the Central Treasury on temporarily imported tangible property.

179. The Claimant also seeks compensation for losses sustained by the Central Treasury as a result of a decision made by the Ministerial Committee on 21 August 1990 to provisionally accept the children of Syrian and other Arab residents from Kuwait at Syrian schools and universities until such time as they could undergo a test and/or "present the required school documents". The losses allegedly consisted of registration fees, university and laboratory fees and books paid for by the Central Treasury on behalf of those children for the 1990-1991 academic year in the total amount of USD 1,779,644.

180. In addition, as noted above, the Claimant seeks compensation in the amount of USD 22,687,385 for the "value of primary services" provided to refugees from Kuwait. According to the Claimant, the primary services provided to these persons included first aid, meals, and tents.

(iii) Analysis and valuation

181. The evidence submitted in support of the claims of the Ministry of Finance for lost fees and duties on private passenger cars and tangible property items does not demonstrate that these items of property would have entered Syria absent Iraq's invasion and occupation of Kuwait. Accordingly, the Panel cannot determine whether, prior to Iraq's invasion and occupation of Kuwait, the Claimant had an expectation of earning these fees and duties, or whether it was the invasion and occupation of Kuwait that gave the Claimant an opportunity to earn such fees and duties. 53/ In the result, the Panel recommends no award of compensation for these claims.

182. With regard to the claim for registration, university and laboratory fees and books paid for on behalf of Syrian and other children who fled from Kuwait, the Panel has previously found that "discretionary payments for on-going ordinary living expenses that are incurred after a person has left the region and taken up a new residence should not normally be considered to be direct consequences of the invasion and occupation of Kuwait". 54/ The Panel considers that this finding is applicable here, and that, absent any evidence to the contrary, the school fees and book costs paid by Syria are on-going ordinary living expenses. 55/ As such, they are

not compensable. Further, and in any event, the Claimant has failed to provide any evidence upon which the Panel could verify or value a loss.

183. With regard to the claim for primary services provided to refugees from Kuwait, the Panel considers that, as a general rule, emergency humanitarian relief provided by a Government to individuals who fled from Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait falls within the scope of paragraphs 34(b) and 36 of Governing Council decision 7 and constitutes a direct loss resulting from Iraq's invasion and occupation of Kuwait. However, despite a request in the article 34 notification, the Claimant did not provide the Commission with further information regarding, inter alia, the nationality or citizenship of the individuals in question; the dates of their arrival in and departure from Syria; their numbers; and the specific costs incurred in respect of the services provided. Further, the Claimant did not submit any evidence demonstrating that Syria incurred the alleged costs.

184. In the result, the Panel is unable to verify that the Claimant incurred any of the asserted costs and, if so, whether the costs were direct losses resulting from Iraq's invasion and occupation of Kuwait. Consequently, this portion of the Claim is not compensable.

(iii) Recommendation

185. The Panel recommends no award of compensation for payment or relief to others.

(b) Other

(i) Facts and contentions

186. The Claimant states that in 1988 the Government of Kuwait offered to provide Syria with annual grants of fertilizer and sulphur valued at USD 50,000,000 per year. According to the Claimant, the 1988-1989 grant was wholly delivered. However, only part of the 1989-1990 grant and none of the 1990-1991 grant could be delivered to Syria as a result of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation in the amount of USD 50,000,000 for the value of the lost grants of fertilizer and sulphur.

187. The Claimant also asserts that, as a result of Iraq's invasion and occupation of Kuwait, 32,873 fewer than expected transport trucks crossed through Syria during the "Gulf Crisis". The Claimant further asserts that the volume of "duties and charges" normally payable per truck crossing through Syria was USD 304.20, and that each truck made 10 journeys through Syria per year. Using these figures as a basis, the Claimant seeks compensation in the amount of USD 100,000,000 for transit fees not collected by the Central Treasury.

(ii) Analysis and valuation

188. The Panel considers that the Claimant did not demonstrate that there was a binding commitment for the Government of Kuwait to provide annual grants of fertilizer and sulphur to the Claimant after 1989. 56/ Thus, the Panel finds that the Claimant failed to prove that it was entitled to receive the grants of fertilizer and sulphur in question or that, in the absence of Iraq's invasion and occupation of Kuwait, they would have been received during the relevant period. Accordingly, this claim is not compensable.

189. With regard to the claim for lost transit fees, the Panel finds that, despite a request in the article 34 notification, the Claimant did not submit any documentation in support of its assertion that 32,873 fewer transport trucks crossed through Syria "during the Gulf Crisis". The Claimant also did not provide any evidence that demonstrates that some or all of these trucks would have, absent Iraq's invasion and occupation of Kuwait, crossed Syria on their way to or from Iraq, Kuwait, Saudi Arabia or Israel. The Panel is therefore unable to verify whether the Claimant sustained any of the asserted losses, or determine whether they are direct losses resulting from Iraq's invasion and occupation of Kuwait. Consequently, this portion of the Claim is not compensable.

(iii) Recommendation

190. The Panel recommends no award of compensation for other losses.

5. Ministry of Health (UNCC Claim No. 5000130)

(a) Public service expenditures

(i) Facts and contentions

191. The Ministry of Health (the "Claimant") originally sought USD 58,978,000 57/ as compensation for the costs of mobilizing doctors, health assistants and other medical staff, as well as hospitals and other medical facilities in Syria during the period of Iraq's invasion and occupation of Kuwait. The amount claimed was increased to USD 59,362,142 58/ in an amended claim form filed with the Commission in December 1996.

192. The Claimant alleges that it maintained medical services on a stand-by basis as a result of the "Gulf crisis", but particularly during the period from 15 December 1990 to 15 April 1991. In so doing, the Claimant allegedly expended resources for the mobilization of 3,000 physicians and 6,500 health assistants who were charged with emergency duty and overtime. Additionally, the Claimant asserts that 200 ambulances with 600 drivers and accompanying staff were mobilized, resulting in additional maintenance and staff costs.

193. The Claimant also alleges that it provided supplementary support to 625 health centres and 39 hospitals in the form of equipment, supplies and

medicines. The Claimant further asserts that in planning for emergencies during the period of Iraq's invasion and occupation of Kuwait, it kept 3,500 hospital beds reserved, amounting to 50 per cent of its public hospital beds, and, where necessary, it transferred public hospital patients awaiting surgical operations to private hospitals. The Claimant seeks the costs of reserving hospital beds, transferring some patients to private hospitals and re-transferring them at the end of Iraq's occupation of Kuwait. 59/

(ii) Analysis and valuation

194. The Panel has previously considered the compensability of safety measures taken by claimants for the protection of individuals and property, and determined that the cost of such measures are compensable provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed. 60/ In its Fourth Report, the Panel set forth guidelines dealing with the geographic limitations within which protective measures might be considered to be compensable. The Panel determined that "a geographic limitation is implied in the requirement that safety equipment is only compensable if it is reasonable in relation to the type of risk to which the individual and/or property is exposed, namely that only protective measures taken within a specific geographical area will be compensated." 61/ Consequently, the Panel limited the compensability of such costs to those reasonable protective measures taken in the countries that the Panel has found to be subject to military operations and/or to threat of military action, namely Iraq, Kuwait, Israel and Saudi Arabia. 62/ The Panel finds that these principles apply to the Claim.

195. Given that all of the claimed expenses were allegedly incurred in respect of health districts located within Syria, the Panel finds that, based on the geographic limitation noted in paragraph 194 above, they are not compensable.

(iii) Recommendation

196. The Panel recommends no award of compensation for public service expenditures.

6. Ministry of Irrigation (UNCC Claim No. 5000131)

197. The Ministry of Irrigation (the "Claimant") initially sought compensation in the amount of USD 462,222,220 63/ for damage caused to irrigation and land reclamation projects located within Syria. In December 1996, the Claimant increased the total amount of the Claim to USD 465,625,000. 64/

(a) Income-producing property

(i) Facts and contentions

198. The Claimant seeks SYP 2,400,000,000 as compensation for losses "in national income" resulting from the delayed start and completion of a contract for the design, supply, installation and operation of mechanical and electrical equipment at a pipe production plant in Syria. The contract was concluded between Syria and a German contractor in June 1989, but had not been implemented by the time of Iraq's invasion and occupation of Kuwait. The contractor was apparently unable to put the contract into effect because the "Gulf Crisis" made it impossible for the contractor to obtain insurance against all risks associated with the contract. The Claimant asserts that, "owing to the continued existence of force majeure, the plant's completion was delayed for two years". This in turn resulted in a two-year delay in the reclamation and irrigation of 30,000 hectares of land in the Euphrates basin. As a result, the land was unavailable to grow cotton during 1992 and 1993, as scheduled, thereby leading to the claimed losses.

199. The Claimant also seeks SYP 400,000,000 as compensation for losses resulting from the delayed start and completion of a contract for the supply of hydromechanical equipment to an irrigation and drainage project in Syria. The contract was concluded between Syria and a French company in August 1990. The company was allegedly unable to perform the contract "due to the force majeure resulting from the circumstances of [the] region and the matter of [the] invasion". As a result, the irrigation and drainage project's completion was allegedly delayed by one year, thereby leading to the loss of one year's production of cotton on 10,000 hectares of land in the Euphrates basin.

200. In addition, a total of SYP 1,615,000,000 is sought by the Claimant as compensation for losses caused by the departure of foreign experts from Syria during the period of Iraq's invasion and occupation of Kuwait. According to the Claimant, a large number of foreign experts were working in Syria under contract to Syria during 1990 and 1991 to carry out investigations, studies, designs, and other works in connection with various irrigation, drainage and dam projects in the Orontes and Balikh basins. Many of these foreign experts decided, on the advice of their Governments, to depart from Syria during the period of Iraq's invasion and occupation of Kuwait, and to not return until February or March 1991.

201. The Claimant asserts that these departures delayed the completion of the foreign experts' work, thereby causing a delay in the execution of the projects. As a result, thousands of hectares of land were rendered less productive, and two hydroelectric plants were delayed in producing power and energy for one year and two years, respectively.

202. The Claimant additionally seeks SYP 80,000,000 as compensation for losses sustained at certain unidentified irrigation and land reclamation

projects in the Euphrates basin. The Claimant provided no further explanation, and advised the Commission that it "could not obtain supporting details and primary documents from the concerned authorities".

203. Lastly, the Claimant seeks SYP 720,000,000 as compensation for losses resulting from the inability to "put" 18,000 hectares of land "in exploitation due to the war circumstances" for a period of one unspecified year, as had been "planned according to the executive time schedule". In its response to the article 34 notification, the Claimant explained that the claim was based on estimates that were themselves based on certain unspecified "complicated data". The Claimant also explained in its response that it was unable to obtain supporting details and primary documents for this claim.

(ii) Analysis and valuation

204. The Claimant was requested in the article 34 notification to explain why it considered that the claimed losses were direct losses resulting from Iraq's invasion and occupation of Kuwait. It responded by stating that, due to possible military confrontation in the area, insurance companies refused to insure all material and equipment intended to be shipped to Syria and foreign experts departed and did not return to Syria until after the end of Iraq's invasion and occupation of Kuwait.

205. As noted in paragraph 21 above, the Panel has previously found that Syria was not subject to military operations or the threat of military action during the period 2 August 1990 to 2 March 1991. Accordingly, the Panel considers that the Claimant needed to demonstrate factual circumstances other than those of a possible military confrontation in Syria in order to establish a causal link between Iraq's invasion and occupation of Kuwait and the alleged losses. The Panel finds, however, that the Claimant did not demonstrate that the claimed losses were direct losses resulting from Iraq's invasion and occupation of Kuwait.

206. For example, the Claimant did not demonstrate that any equipment or materials required for the projects had to be transported to, from or within a location that was subject to military operations or an actual, as opposed to speculative, threat of military action.

207. In addition, the Panel finds that the Claimant did not establish the nature of its ownership or interest in the relevant projects and agricultural lands, and therefore did not demonstrate that it sustained any loss.

208. Consequently, on the basis of these findings, the Panel finds that the Claim is not compensable.

(iii) Recommendation

209. The Panel recommends no award of compensation for income-producing property losses.

7. Ministry of Petroleum and Mineral Resources (UNCC Claim No. 5000132)

(a) Contract

(i) Facts and contentions

210. The Ministry of Petroleum and Mineral Resources (the "Claimant") originally sought compensation in the amount of USD 360,000,000 for losses associated with the freezing of an agreement in principle which had been reached prior to Iraq's invasion of Kuwait between Syria and Iraq to resume pumping of Iraqi oil through a Syrian pipeline and to provide Syria with certain quantities of oil at reduced prices. The Claimant asserted that Syria's compliance with the trade embargo imposed on Iraq by Security Council resolution 661 (1990) led to the freezing of the agreement and to the loss of pipeline fees and discounted prices on oil from Iraq.

211. In a December 1997 communication to the Commission, the Claimant introduced a claim in the amount of USD 42,120,000 for losses caused by the delayed completion of two gas compression and transportation projects in Syria. The Claimant explained that, during a review of its original claim, it became clear that portions of the original claim either were not compensable in principle in the light of Governing Council decisions or could not be supported by the necessary documentation.

(ii) Analysis and valuation

212. The Panel considers that the claim raised by the Claimant in its December 1997 communication is a new claim from that originally filed. In accordance with the principles set out in paragraph 17 above, the Panel finds that this claim for losses caused by the delayed completion of two projects in Syria is not admissible as it is time-barred.

213. Further, the Panel considers that the time-barred claim was raised as an amendment or supplement to the original claim which, in the Claimant's own assessment, did not meet the Commission's criteria for the processing of claims and was not supported by any evidence. Accordingly, the Panel determines that it need not consider further the compensability of the original claim.

(iii) Recommendation

214. The Panel recommends no award of compensation for contract losses.

8. Ministry of Tourism (UNCC Claim No. 5000133)

(a) Other

(i) Facts and contentions

215. Syria's Ministry of Tourism (the "Claimant") originally sought compensation in the total amount of USD 455,921,280 for losses sustained by the Syrian tourism sector. In December 1996, the Claimant increased the

amount of its Claim to USD 590,972,400, on the basis of more recently published tourism statistics.

216. The Claimant asserts that Iraq's invasion and occupation of Kuwait suddenly halted the arrival of tourists to Syria, and that this situation continued for one year after Iraq's invasion of Kuwait. As a result, revenue losses were allegedly sustained in all public and private sector areas affected by tourism. The Claimant derives its loss figure of USD 590,972,400 from the estimated drop in the total number of nights spent by tourists in Syria during 1990 and 1991, and from the average daily expenditure of a tourist in Syria on items such as food, accommodation and internal transportation. The latter is estimated at USD 176 per day for 1990 and USD 239 per day for 1991.

217. The article 34 notification requested the Claimant to explain why it had filed the Claim on behalf of some private companies and individuals in the tourism industry in Syria who may have sustained some of the losses being claimed. The Claimant responded that had private entities submitted claims, this would have caused confusion both for the Commission and Syria. The Claimant asserted that it undertook necessary measures to ensure that no individuals or private companies had filed claims with the Commission for the same losses, and that it would distribute any compensation received from the Commission equally among all affected parties. However, the Claimant provided the names of only some of the parties affected by the alleged losses. The Claimant also did not prove that it was authorized to claim for the alleged losses on behalf of private companies and individuals.

(ii) Analysis and valuation

218. The Panel considers that the facts and contentions supporting the Claim are such that, in order for the asserted losses to meet the requirement of directness, the Claimant must demonstrate that the losses were a result of either "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" pursuant to paragraph 34(a) of Governing Council decision 7, or "[d]eparture of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period" pursuant to paragraph 34(b) of decision 7.

219. As noted in paragraph 21 above, the Panel has previously found that Syria was not the subject of military operations or the threat of military action within the meaning of paragraph 34(a) of Governing Council decision 7. Furthermore, the Panel considers that a general apprehension that may have been felt by visiting and potential tourists to Syria during the period of Iraq's invasion and occupation of Kuwait does not meet the directness requirement independent of the circumstances or events enumerated in paragraph 34 of Governing Council decision 7. 65/

220. The Panel takes note of the finding of the "C" Panel that approximately 60,000 persons, of whom some 50,000 were Syrian nationals,

left Iraq for Syria after 2 August 1990. 66/ Although this influx of persons into Syria was not insignificant, the Claimant did not demonstrate that it affected Syria's ability to receive tourists at ports of entry or hindered the ability of tourists to travel within Syria. 67/ Accordingly, the Panel finds that there is no direct causal link between the claimed tourism revenue losses and the "[d]eparture of persons from or their inability to leave Iraq or Kuwait" within the meaning of paragraph 34(b) of Governing Council decision 7.

221. Furthermore, and in any event, the Panel finds that the Claimant did not demonstrate that it sustained the losses claimed or that, in respect of the losses allegedly sustained by private companies and individuals, it has the authority to claim for such losses on behalf of others. 68/ The Claimant also did not provide any evidence that would allow the Panel to verify the numbers of tourists visiting Syria during 1990 and 1991.

222. On the basis of these findings, the Panel finds that the Claim is not compensable.

(iii) Recommendation

223. The Panel recommends no award of compensation for other losses.

9. Recommendation for the Syrian Arab Republic

224. Based on its findings regarding the Claims filed by the Syrian Arab Republic, the Panel recommends no award of compensation.

Table 4. Recommended compensation for the Syrian Arab Republic

Loss type	Review amount (original currency) (USD)	Recommended compensation (USD)
1. Central Bank of Syria		
Other	425,000,000	nil
2. Ministry of Defence		
Public service expenditures	1,366,995,121	nil
3. Ministry of Economy and Foreign Trade		
Business transaction or course of dealing	188,516,000	nil
4. Ministry of Finance		
Payment or relief to others	233,005,161	nil
Other	150,000,000	nil
5. Ministry of Health		
Public service expenditures	59,362,142	nil
6. Ministry of Irrigation		
Income-producing property	465,625,000	nil
7. Ministry of Petroleum and Mineral Resources		
Contract	360,000,000	nil
8. Ministry of Tourism		
Other	590,972,400	nil
Total	3,839,475,824	nil

D. The Republic of Turkey

225. The Claims submitted by the Government of the Republic of Turkey ("Turkey") include claims for:

a. Losses relating to Turkey's preparation for, participation in and provision of support in relation to the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait;

b. Outstanding debt owed by Iraq;

c. Damage to property belonging to Turkey;

d. Assistance provided to refugees; and

e. Tourism revenue losses.

1. Ministry of Public Works and Settlement, General Directorate of Highways (UNCC Claim No. 5000150)

(a) Payment or relief to others

(i) Facts and contentions

226. The Ministry of Public Works and Settlement, General Directorate of Highways (the "Claimant") seeks compensation in the amount of USD 543,363 for "immigrant expenditures" allegedly incurred as a direct result of Iraq's invasion and occupation of Kuwait.

227. According to the Claimant, support services and aid were provided to refugees who arrived in south-east Turkey from Iraq in 1991. As a result, the Claimant states that it incurred personnel expenses, including salaries, overtime and other allowances in the amount of USD 23,902 and transportation expenses for the provision of fuel and oil in the amount of USD 519,461.

(ii) Analysis and valuation

228. Despite a request in the article 34 notification, the Claimant did not provide the Commission with detailed information regarding, inter alia, the nationality or citizenship of the refugees from Iraq; the dates of their arrival in and departure from Turkey; their numbers; and the specific type of aid provided to them. In the absence thereof, the Panel is unable to determine whether this portion of the Claim is for direct losses resulting from Iraq's invasion and occupation of Kuwait. Furthermore, the Claimant did not demonstrate that it incurred the claimed expenses. Consequently, this portion of the Claim is not compensable.

(iii) Recommendation

229. The Panel recommends no award of compensation for payment or relief to others.

(b) Public service expenditures

(i) Facts

230. The Claimant alleges that it incurred certain equipment costs as a direct result of Iraq's invasion and occupation of Kuwait. In particular, the Claimant seeks compensation in the amount of USD 837,257 for fuel, spare parts, tyre and overtime costs it allegedly incurred "during the crisis".

231. The article 34 notification requested that the Claimant provide a more detailed explanation of the equipment costs claim, including particulars of the use to which the relevant equipment had been put and the period during which the costs were incurred. However, the Claimant's response provided none of the particulars requested and attached evidence that was unaccompanied by an English translation.

232. The Claimant also seeks a total of USD 11,276,078 as compensation for an "allowance" allegedly required to rehabilitate and resurface Turkish highways that suffered pavement deterioration during the period of Iraq's invasion and occupation of Kuwait.

233. In the article 34 notification, the Claimant was requested to explain its claim for pavement deterioration in detail, including particulars of the cause of the deterioration. In its response, the Claimant stated that highways near the Habur border gate and the military bases in Adana, Tatvan and Diyarbakir had deteriorated as a result of the traffic of heavy vehicles, military tanks and other tracked military vehicles.

(ii) Analysis and valuation

234. The Panel finds that the information and evidence provided by the Claimant is insufficient to demonstrate that the alleged equipment costs and pavement deterioration losses were direct losses resulting from Iraq's invasion and occupation of Kuwait and were non-military in nature. The Panel also finds that the evidence is insufficient to demonstrate that the Claimant incurred such costs and losses. Consequently, these items are not compensable.

(iii) Recommendation

235. The Panel recommends no award of compensation for public service expenditures.

2. Prime Ministry, General Directorate of Rural Services (UNCC Claim No. 5000151)

(a) Public service expenditures

(i) Facts and contentions

236. The Prime Ministry, General Directorate of Rural Services (the "Claimant") seeks compensation in the amount of USD 55,937,337 for expenditures incurred in relation to the temporary settlement of refugees from Iraq in the Turkish provinces of Hakkari, Diyarbakir, Sivas and Kayseri. According to the Claimant, various settlement works and infrastructure services were undertaken in these provinces, including road construction and repair, land arrangement for camping, domestic water supply and sanitation construction in order to assist these refugees. Machinery, equipment and personnel were allegedly transferred to the area in order to carry out the required works and services.

237. The article 34 notification requested that the Claimant explain the nature of the Claim in detail, including the nationality or citizenship of the refugees; the dates of their arrival in Turkey; the length of their stay in Turkey; and the dates on which the relevant infrastructure was set up. In its response, the Claimant explained that the settlement works and infrastructure services were carried out during the period February to May 1991, and that the refugees remained in Turkey for approximately two years after their arrival. In a supplemental response, the Claimant further explained that the reference to refugees in the Claim included Iraqi citizens of Kurdish origin, Turkomans and Assyrians who fled to Turkey from Northern Iraq. The Claimant did not, however, provide any further details regarding the dates of arrival of the refugees in Turkey.

(ii) Analysis and valuation

238. As previously noted above at paragraph 183, the Panel considers that emergency humanitarian relief provided by a Government to individuals who fled from Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait falls within the scope of paragraphs 34(b) and 36 of Governing Council decision 7 and therefore constitutes a direct loss resulting from Iraq's invasion and occupation of Kuwait.

239. The Panel recognizes, however, that there are limitations on the availability of compensation for relief provided to refugees or evacuees. One such limitation is set out in subparagraph 62(a) above.

240. Based on the information and evidence provided by the Claimant, the Panel concludes that the Claimant is seeking compensation for works and services that were provided to assist Kurdish and other Iraqi refugees who fled from Iraq after 2 March 1991. Consequently, the Panel finds that the Claim is not compensable.

241. Further, and in any event, the Panel finds that the Claimant did not provide sufficient evidence in support of the Claim to permit the Panel to verify and quantify the losses claimed.

(iii) Recommendation

242. The Panel recommends no award of compensation for payment or relief to others.

3. Ministry of National Defence (UNCC Claim No. 5000154)

(a) Public service expenditures

(i) Facts and contentions

243. The Ministry of National Defence (the "Claimant") seeks USD 929,652,349 as compensation for expenses incurred by the Turkish Armed Forces "as a result of military operations or threat to secure Kuwait from the unlawful invasion and occupation of Iraq". The Claimant describes the claimed expenses as either "Operations and Maintenance Appropriations" or "Military (Personnel) Pay Appropriations" and notes that they were incurred in relation to, inter alia, the transportation of units and materials, the procurement and supply of operational supplies and repair parts, the use of aircraft for patrol, security and training missions, and the payment of wages and salaries to "Officers and NCOs".

244. The Claimant was requested in the article 34 notification to provide a detailed explanation of the nature of the operations that form the basis of the Claim and to indicate whether any portions of the Claim relate to expenditures incurred in activities of a non-military nature. The Claimant responded by explaining that its Air Forces, Land Forces and Naval Forces either reinforced existing defences or undertook new military measures in response to Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

245. The Panel finds that the claimed expenses were either incurred in respect of Turkey's own military response to Iraq's invasion and occupation of Kuwait or related to the Allied Coalition Forces' military response to Iraq's invasion and occupation of Kuwait. As such, the Panel finds that the claimed expenses constitute military costs that are, for the reasons set out in paragraphs 23-25 above, not eligible for compensation.

(iii) Recommendation

246. The Panel recommends no award of compensation for public service expenditures.

4. Ministry of National Education (UNCC Claim No. 5000155)

(a) Contract

(i) Facts and contentions

247. The Ministry of National Education (the "Claimant") originally sought USD 53,509 as compensation for certain expenses that it incurred in relation to the Educational Counsellor's Office in Baghdad. According to the Claimant, these expenses consisted of the salary paid to the Deputy Educational Counsellor during the period August 1990 to March 1991, the salary paid to the Secretary of the Educational Counsellor's Office during the period August 1990 to February 1993, and the rent paid for the premises of the Educational Counsellor's Office within the Turkish Embassy in Baghdad for the period October 1990 to May 1996.

248. In an October 1997 submission, the Claimant increased the amount claimed for these expenses by a total of USD 2,116. In the same submission, the Claimant sought compensation for a new claim: USD 9,034 for "travel funds and daily payments" paid to the Educational Counsellor of Baghdad between 1992 and 1996. 69/

249. In the article 34 notification, the Claimant was requested to explain why it continued to pay the salaries of the Deputy Educational Counsellor and the Secretary and why it sought compensation for rent paid after October 1990. The Claimant's response indicated that, although the services of the Educational Counsellor's Office ceased following Iraq's invasion and occupation of Kuwait, Turkey continued to operate the Office as a Cultural Centre and to employ the Deputy Educational Counsellor and the Secretary. The response also indicated that, because the Educational Counsellor's Office was unable to perform its normal functions or services, even after Kuwait's liberation, the Claimant is seeking compensation for the rent paid for the premises.

(ii) Analysis and valuation

250. The Panel finds that the claim for "travel funds and daily payments" is a new claim introduced after the 1 January 1997 deadline. Accordingly, it is not admissible.

251. The Panel has previously considered claims for salaries paid to individuals who were members of a Government's permanent staff at the time of Iraq's invasion of Kuwait. The Panel found that the payment of the salaries could not be considered to result directly from Iraq's invasion and occupation of Kuwait because the expense would have been incurred in any event. 70/ The Panel considers that this reasoning is applicable here. Accordingly, the claim for the salaries paid to the Deputy Educational Counsellor and the Secretary of the Educational Counsellor's Office is not compensable.

252. With regard to the claim for the rent paid for the premises of the Educational Counsellor's Office in Baghdad, the Panel notes that the premises continued to be used as a Cultural Centre after October 1990. The Panel therefore considers that the Claimant did not suffer a loss. Accordingly, the Panel finds that the claim for rent expenses is not compensable.

(iii) Recommendation

253. The Panel recommends no award of compensation for contract losses.

5. Ministry of Tourism (UNCC Claim No. 5000157)

254. Turkey's Ministry of Tourism (the "Claimant") originally sought compensation in the total amount of USD 1,395,000,000 for tourism revenue losses incurred in the period 1990-1992 and USD 6,573 for destruction of office equipment and material in Kuwait. In January 1998, the Claimant asserted a new claim for USD 2,271,495 in respect of increased advertising and promotional expenses incurred by the Claimant in 1991. In September 1999, the Claimant amended its Claim to include losses of income sustained in the tourism and other related sectors during the period 1990-1995 in the total amount of USD 3,230,000,000.

255. The Panel finds that, in accordance with the principles set out in paragraph 17 above, the claims introduced by the Claimant after 1 January 1997 are not admissible. Similarly, the Claimant's increase of the total quantum of the Claim after 11 May 1998 is also not admissible. Therefore, the total amount claimed is limited to USD 1,395,006,573.

(a) Other tangible property

(i) Facts and contentions

256. The Claimant seeks USD 6,573 as compensation for the value of office material and equipment lost at its information office in Kuwait.

(ii) Analysis and valuation

257. The Panel has previously determined that, for the reasons given by it with respect to the compensability of claims for damage to real property, claims for loss of tangible property located in Iraq or Kuwait are also compensable to the extent that they are supported by sufficient documentary and other appropriate evidence. 71/ The Panel considers that those reasons are also applicable here. Accordingly, the Panel finds that, to the extent they are supported by sufficient evidence, the claimed office material and equipment losses are compensable, with an adjustment being made for depreciation.

(iii) Recommendation

258. The Panel recommends an award of USD 1,800 in respect of other tangible property.

(b) Other

(i) Facts and contentions

259. The Claimant seeks compensation in the amount of USD 1,395,000,000 for the loss of tourism revenues suffered by the "Turkish tourism sector" in the period 1990-1992. The Claimant asserts that "[t]he political changes that took place in the countries of Eastern Europe in 1989, and the Gulf Crisis led to significant changes in the composition of tourists visiting Turkey". While the Claimant admits that the overall number of tourists visiting Turkey did not decline during this period, it asserts that the number of tourists from Organization for Economic Co-operation and Development ("OECD") countries decreased.

260. According to the Claimant, Iraq's invasion and occupation of Kuwait caused a number of OECD countries to declare Turkey an "insecure destination" and to "hinder" travel to Turkey by increasing travel costs thereto. As a result, the total number of tourists visiting Turkey from OECD countries dropped below growth projections for 1991 and 1992. The Claimant explains that, even though the drop in the number of OECD tourists was offset by an increase in the number of tourists visiting Turkey from Eastern European countries, the Turkish tourism sector lost revenue. According to the Claimant, the expenditures of tourists from Eastern European countries "were rather low compared to OECD countries' tourist expenditures".

261. In its response to the article 34 notification, the Claimant requested that an unspecified amount of interest be awarded on the total amount sought by it for the alleged loss of tourism sector revenue.

(ii) Analysis and valuation

262. The Panel considers that the facts and contentions supporting the Ministry of Tourism's claim for tourism revenue losses are such that, in order to meet the requirement of directness, the Claimant must demonstrate that the tourism revenue losses were a result of either "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991" as provided for in paragraph 34(a) of Governing Council decision 7, or "[d]eparture of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period" as provided for in paragraph 34(b) of decision 7.

263. As noted in paragraph 21 above, this Panel has previously found that Turkey was not the subject of military operations or the threat of military action within the meaning of paragraph 34(a) of Governing Council decision 7. Furthermore, the Panel considers that a general apprehension that may have been felt by visiting and potential tourists to Turkey during the period of Iraq's invasion and occupation of Kuwait does not meet the directness requirement independent of the circumstances or events enumerated in paragraph 34 of Governing Council decision 7. 72/

264. The Panel takes note of the finding of the "C" Panel that approximately 60,000 persons, most of whom were from Bangladesh, Pakistan, Sri Lanka and Vietnam, left Iraq or Kuwait for Turkey after 2 August 1990. 73/ Although this influx of persons into Turkey was not insignificant, the Claimant did not demonstrate that it affected Turkey's ability to receive tourists at ports of entry or that it hindered the ability of tourists to travel within Turkey. 74/ Moreover, the Claimant asserted there was no overall decline in the number of tourists that visited Turkey in the period 1990-1992. Accordingly, the Panel finds that there is no direct causal link between the claimed tourism revenue losses and the "[d]eparture of persons from or their inability to leave Iraq or Kuwait" within the meaning of paragraph 34(b) of Governing Council decision 7.

265. In the light of its findings, the Panel finds that this portion of the Claim is not compensable.

266. Further, and in any event, the Panel finds that the Claimant did not demonstrate that it sustained the claimed losses, or that it has standing or authority to claim for such losses on behalf of the entire Turkish tourism sector, which includes both state-owned and private enterprises.

(iii) Recommendation

267. The Panel recommends no award of compensation for other losses.

6. Central Bank of the Republic of Turkey (UNCC Claim No. 5000299)

268. The Central Bank of the Republic of Turkey (the "Claimant") originally sought USD 864,036,555 as compensation for losses related to the extension of export credits, the collapse of the Bekhme Dam project, and the purchase of Iraqi dinar and Kuwaiti dinar banknotes.

269. As noted previously in this Report, the portion of the Claim that related to the collapse of the Bekhme Dam Project in Northern Iraq was severed and transferred to the "E3" Panel. It was included with similar claims and reported in the first instalment of "E3" claims. 75/ The remaining portions of the Claim total USD 742,596,146.

270. In submissions dated 21 January 1997, 9 September 1999 and 2 February 2000, the Claimant increased the total amount of the Claim before this Panel by USD 128,689,547, USD 133,910,530 and 7,613 Iraqi dinars ("IQD"), respectively. These increases are discussed below.

(a) Contract

(i) Facts and contentions

271. During the period 1983-1986, the Claimant entered into a number of "Banking Arrangements" with the Central Bank of Iraq (the "CBI") in an effort to increase the value of Turkish exports to Iraq. Under the terms

of these arrangements, the Claimant agreed to extend export credits to the CBI to cover a percentage of the value of Turkish goods imported by Iraq.

272. Although the CBI agreed under the terms of the Banking Arrangements to repay the Claimant for the export credits that were utilized, the CBI was unable to repay, on a timely basis, its outstanding accounts with the Claimant. As a result, the Claimant agreed in 1986, 1987 and 1989 to enter into a number of deferred payment arrangements with the CBI.

273. Under the terms of a "final Banking Arrangement" dated 3 May 1989 (the "1989 Contract"), the Claimant and the CBI agreed to settle all outstanding export credit debts by "payments of crude oil liftings" and cash payments from Iraq to Turkey during the period 1989-1991. According to the Claimant, the last of these payments was due to be made by Iraq in October 1991. However, the Claimant asserts that Iraq ceased to make the payments to Turkey after August 1990 "because of the Gulf Crisis".

274. As of 1 October 1991, the principal and interest amounts owed to the Claimant under the 1989 Contract totalled USD 682,051,262. The amount of USD 742,587,769 originally sought as compensation for losses relating to the 1989 Contract also included, however, interest that had accrued on the outstanding balance to 31 January 1994. In its submission dated 21 January 1997, the Claimant advised that, as of 31 December 1996, the total amount owed to it under the 1989 Contract had reached USD 871,277,316 as a result of the further accrual of interest. In its submission dated 9 September 1999, the Claimant advised that, as of 31 August 1999, the total amount owed to it under the 1989 Contract had reached USD 1,005,187,846 as a result of the further accrual of interest.

275. In its response to the Claim, Iraq submitted that it attempted, after 2 August 1990, to continue to make crude oil payments to Turkey, but that Turkey refrained from accepting such payments.

(ii) Analysis and valuation

276. Paragraph 16 of Security Council resolution 687 (1991) states:

> "[T]hat Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss ... as a result of Iraq's unlawful invasion and occupation of Kuwait."

277. The Panel notes that in the First "E2" Report, the "E2" Panel considered the issue of the compensability of Iraq's debts existing at the time of the invasion and occupation of Kuwait and made the following determination:

> "[T]he Panel finds that a rule which best implements the Security Council's intention in resolution 687 (1991) is the following:

> In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990.
>
> 'Performance' as understood by the Panel for purposes of this rule can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance." 76/

278. The "E2" Panel also found that "the object and purpose of the Security Council's insertion of the 'arising prior to' clause was to exclude from the jurisdiction of the Commission Iraq's old debt". 77/ The Panel considers that the same reasoning is also applicable here.

279. The Panel finds that the existence of the 1989 Contract demonstrates that long before Iraq's invasion and occupation of Kuwait, Iraq could not pay, on a timely basis, amounts owed for the export credits provided. Consequently, the claim for amounts owed under the 1989 Contract is not compensable, since performance was fully completed by the Claimant long before 2 May 1990.

(iii) Recommendation

280. The Panel recommends no award of compensation for contract losses.

(b) Other

(i) Facts and contentions

281. The Claimant seeks USD 4,065 as compensation for Kuwaiti dinar banknotes that the Central Bank of Kuwait refused to accept from it. The Claimant alleges that it sent a total of 55,066.25 Kuwaiti dinars ("KWD") to the Central Bank of Kuwait for exchange in August 1991, and that the Central Bank of Kuwait returned banknotes totalling KWD 1,170 to the Claimant on the basis that they formed part of the series that had been stolen by Iraqi forces in Kuwait and subsequently cancelled during the period of Iraq's invasion and occupation of Kuwait. According to the Claimant, it purchased KWD 22,236.25 of the banknotes submitted for exchange prior to 2 August 1990, while the remaining KWD 32,830 were purchased from Turkish commercial banks between 2 August 1990 and 30 April 1991.

282. The Claimant also seeks USD 4,312 as compensation for Iraqi dinar banknotes totalling IQD 13,800 that were allegedly "withdrawn from circulation according to the decision of [the] Iraqi Government dated May 5, 1993". However, in a submission dated 2 February 2000, the Claimant advised that Iraqi dinar banknotes totalling IQD 21,413 had "not been sent to Iraq after August 2, 1990 because of the decision of the United Nations

Security Council related to Iraq". The Claimant also advised that these Iraqi dinar banknotes were purchased by it prior to 2 August 1990.

(ii) Analysis and valuation

283. In accordance with the principles concerning supplements and amendments set out in paragraph 17 above, the Claimant's attempt to increase the amount of its existing claim for Iraqi dinar banknotes from IQD 13,800 to IQD 21,413 is not admissible.

284. The compensability of the claim for the cancelled Kuwaiti dinar banknotes depends upon the circumstances under which the banknotes came into the Claimant's possession. In this regard, the Panel finds that the Claimant did not explain whether it received the Kuwaiti dinar banknotes in the usual course of its business, or whether it took reasonable measures to avoid the losses for which it claims (e.g., whether it stopped accepting Kuwaiti dinars after notice of the cancelled banknotes was circulated to banks). Consequently, the Panel finds that this claim for the cancelled Kuwaiti dinar banknotes is not compensable.

285. With regard to the claim for the Iraqi dinar banknotes, the Panel considers that the Claimant has failed to demonstrate that the alleged losses were direct losses resulting from Iraq's invasion and occupation of Kuwait. Although the Claimant may have suffered a loss from holding the Iraqi currency, the Claimant has failed to demonstrate that the trade embargo imposed on Iraq by Security Council resolution 661 (1990) was not the sole cause of the losses, or that the losses could not reasonably have been avoided. 78/ Consequently, the Panel finds that this claim is not compensable.

(iii) Recommendation

286. The Panel recommends no award of compensation for other losses.

7. Recommendation for the Republic of Turkey

287. Based on its findings regarding the Claims filed by the Republic of Turkey, the Panel recommends compensation in the amount of USD 1,800.

Table 5. Recommended compensation for the Republic of Turkey

Loss type	Review amount (original currency) (USD)	Recommended compensation (USD)
1. Ministry of Public Works and Settlement, General Directorate of Highways		
Payment or relief to others	543,363	nil
Public service expenditures	12,113,335	nil
2. Prime Ministry, General Directorate of Rural Services		
Public service expenditures	55,937,337	nil
3. Ministry of National Defence		
Public service expenditures	929,652,349	nil
4. Ministry of National Education		
Contract	55,625	nil
5. Ministry of Tourism		
Other tangible property	6,573	1,800
Other	1,395,000,000	nil
6. Central Bank of the Republic of Turkey		
Contract 79/	871,285,693	nil
Other	8,377	nil
Total	3,264,602,652	1,800

VI. SUMMARY OF RECOMMENDATIONS

288. Based on the foregoing, the Panel recommends the following amounts of compensation:

a. The Federal Republic of Germany: USD 4,931,828;

b. The State of Israel: USD 74,563,000;

c. The Syrian Arab Republic: nil;

d. The Republic of Turkey: USD 1,800;

Geneva, 1 December 2000

(*Signed*) Mr. Bjørn Haug
Chairman

(*Signed*) Mr. Georges Abi-Saab
Commissioner

(*Signed*) Mr. Michael Bonell
Commissioner

Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure", (S/AC.26/1992/10).

2/ "F1" claims are the claims, other than environmental claims, of international organizations and all Governments other than the Governments of the Hashemite Kingdom of Jordan, the State of Kuwait and the Kingdom of Saudi Arabia.

3/ The "Original amount claimed" is the amount of compensation requested by the claimant on the original claim form filed with the Commission. If this amount was not expressed in USD, then, for the sole purpose of comparison, it is expressed in USD using the August 1990 mid-point rate of exchange as indicated in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/120). The Original amount claimed does not reflect any subsequent amendments that may have been made by the claimant.

4/ The "Amended amount claimed" is the Original amount claimed as amended in a timely manner by the claimant. It includes any reductions to or partial withdrawal of claims made before the Panel finalized this Report.

5/ The Original amount claimed in respect of this claim was 204,771,954 German deutsche mark ("DEM") and USD 509,000.

6/ The portion of the consolidated claim of the State of Israel in the original amount claimed of USD 11,000,000 that related to insurance losses was severed and transferred to the "E/F" Panel, appointed to review export guarantee and insurance claims.

7/ The portion of the claim of Central Bank of the Republic of Turkey in the original amount claimed of USD 121,440,409 that related to the Bekhme Dam Project in Northern Iraq was severed and transferred to the "E3" Panel, appointed to review non-Kuwaiti construction/engineering claims. The Amended amount claimed includes an interest component; see para. 274 of this Report.

8/ Category "C" claims are individual claims for damages up to USD 100,000 while category "D" claims are individual claims for damages above USD 100,000. Category "E" claims are claims filed on behalf of corporations. Pursuant to Governing Council decision 1, (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13, (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category "A" (departure claims) and category "B" (claims for serious personal injury and death). It was, therefore, not necessary to carry out cross-category checks in respect of claims in categories "A" and "B".

9/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1997/6), (the "First Report"), paras. 47-64. See also "Report and Recommendations made by the Panel of Commissioners concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1998/4), (the "Second Report"), para. 45; "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'F1' Claims", (S/AC.26/1998/12), (the "Third Report"), para. 75; "Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of 'F1' Claims", (S/AC.26/1999/7), (the "Fourth Report"), para. 75; and "Report and Recommendations made by the Panel of Commissioners concerning the Fourth Instalment of 'F1' Claims", (S/AC.26/2000/13), (the "Fifth Report"), para. 12.

10/ See the First Report, para. 62.

11/ See letter dated 11 March 1998 from the secretariat to the Permanent Missions of States and Offices of International Organizations (UNCC/EXE/614/1998).

12/ See also "Report and Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'E2' claims", (S/AC.26/1999/6), (the "Second 'E2' Report"), para. 54.

13/ This finding is also consistent with that of other panels; see, for example, "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'F2' Claims" (S/AC.26/1999/23), (the "First 'F2' Report"), para. 22.

14/ Governing Council decision 7, "Criteria for additional Categories of Claims", (S/AC.26/1991/7/Rev.1).

15/ The First Report, para. 94.

16/ Ibid.

17/ Ibid., paras. 40 and 96. The "E2" Panel also decided at paras. 122 and 123 of the Second "E2" Report that Turkey was not subject to military operations or threat of military action during the period of Iraq's invasion and occupation of Kuwait.

18/ The First "F2" Report, paras. 25, 257 and 363.

19/ Governing Council decision 19, "Military Costs", (S/AC.26/Dec.19 (1994)).

20/ The Panel notes that the "F2" Panel has previously considered a claim by the Government of Jordan for the cost of maintaining adequate military readiness during the period of Iraq's invasion and occupation of Kuwait. The "F2" Panel found that, although the Armed Forces of Jordan did not form part of the Allied Coalition Forces, the extra costs of wages, patrols, manoeuvres, training, equipment, clothing, spare parts, maintenance and depreciation of equipment were expended for the purpose of maintaining Jordan's military readiness and were military costs as contemplated by the Governing Council. See the First "F2" Report, paras. 138, 158 and 160.

21/ The Fifth Report, paras. 20-21.

22/ See, for example, the First Report, para. 100; the Second Report, para. 74; and the Third Report, para. 126. See also, "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of Individual Claims for Damages up to USD 100,000 (category 'C' claims)" (S/AC.26/1994/3), (the "First 'C' Report"), pp. 31-32; "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E2' claims" (S/AC.26/1998/7), (the "First 'E2' Report"), para. 279; and "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E4' claims" (S/AC.26/1999/4), para. 227.

23/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

24/ There is no need to set a date from which interest should run for Israel's Ministry of Health because no award of compensation is recommended after the set-off. See para. 149 of this Report.

25/ "United Nations Compensation Commission, Claim Forms for Governments and International Organizations (Form F)", Part "F", Summary of Losses Claimed.

26/ The Fourth Report, para. 88. See also, the First Report, paras. 67-68; the Third Report, paras. 83-85; and the Fifth Report, para. 35.

27/ The Panel notes that at para. 79 of the First Report, it considered a Government's claim for the costs it incurred following the liberation of Kuwait to recover several of its cars that had been left in Baghdad during the evacuation of its Embassy. In considering the compensability of the claim, the Panel took account of paragraph 6 of Governing Council decision 9, which recognizes that claimants are under a duty to mitigate and instructs the panels not to compensate losses that "could reasonably have been avoided". The Panel determined that reasonable expenses incurred by claimants in mitigating damage resulting from Iraq's invasion and occupation of Kuwait are compensable, and that the Government's retrieval of its cars from Baghdad constituted a reasonable step in mitigation of its tangible property losses.

28/ See the Third Report, para. 106; the Fourth Report, paras. 129-131; and the Fifth Report, paras. 290 and 293.

29/ The Fifth Report, paras. 297-298.

30/ Ibid., para. 110.

31/ Ibid., para. 71.

32/ Ibid., para. 70.

33/ See the Third Report, para. 122; and the Fourth Report, paras. 137-140.

34/ See the First Report, para. 85.

35/ The Panel notes that Jordan was a transit point for many evacuees fleeing from Iraq and Kuwait after 2 August 1990.

36/ The First Report, paras. 92-96; and the Third Report, paras. 100-111.

37/ The "Review amount" is the Amended amount claimed as modified by the Panel's reclassification of loss types, correction for arithmetical errors and reductions to the Amended amount claimed requested by the claimant. It does not include those portions of claims that were severed and assigned to other panels. It also does not include attempts by claimants to increase amounts claimed or to introduce new claims by way of the claim development process, since they are not permitted. The Review amount is stated in the original currency in which the amount was claimed, and converted, if necessary, into USD.

38/ As noted previously in this Report, the Claim as originally submitted by the Claimant included a portion relating to insurance losses that was severed and transferred to the "E/F" Panel.

39/ This USD figure is based on the Claimant's conversion of NIS 228,658,463.

40/ Israel, Ministry of Justice, Laws of the State of Israel, vol. 15, 5721-1960/61 (Government Printer), p. 101.

41/ The MOF did not claim for loss adjusters' fees or any other costs that it may have incurred in administering the compensation scheme.

42/ The component items asserted in respect of the Ground Forces total USD 201,000,000, rather than the figure of USD 202,000,000. This figure of USD 201,000,000 was subsequently confirmed by the MOD in its September 1999 response to the article 34 notification.

43/ See the Third Report, para. 122; and the Fourth Report, paras. 137-141.

44/ The Panel notes that at paras. 101-103 of the Second "E2" Report, the "E2" Panel also found in the context of the corporate claims before it that Israel was the subject of a threat of military action. The "E2" Panel considered that the period of threat was from 15 January to 2 March 1991. However, this Panel considers that the context and factual circumstances underlying the "E2" Panel's determination are different from those faced by this Panel, which relate to a Government's provision of reasonable protective measures.

45/ The Third Report, para. 120; and the Fourth Report, para. 127.

46/ This USD figure is based on the Claimant's conversion of approximately NIS 100,000,000.

47/ United States of America, United States Statutes at Large, 1991 and Proclamations, vol. 105, part 1 (Washington, D.C., U.S. Government Printing Office, 1992), Public Law No. 102-27, p. 130.

48/ Governing Council decision 13, "Further Measures to Avoid Multiple Recovery of Compensation by Claimants", (S/AC.26/1992/13).

49/ The Fifth Report, paras. 136-137, 145-147, and 157-158.

50/ The USD 28,118,500 set-off amount for the MOH exceeds the recommended amount prior to set-off of USD 26,600,000. Accordingly, the figure of USD 26,600,000 is included in this column of the table.

51/ The Panel further refers to the discussion in its First Report stressing the procedural and evidentiary requirements imposed on claimants. See the First Report, paras. 56-60.

52/ Note Verbale dated 31 January 1991 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General, (S/22193, 4 February 1991).

53/ See also the Fifth Report, para. 161.

54/ The First Report, para. 85.

55/ The Panel notes that both the "C" and "D" Panels consider claims for "school fees" to be non-compensable claims for "on-going ordinary living expenses". See, for example, the First "C" Report, pp. 78-79; and "Report and recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of individual claims for damages above USD 100,000 (category 'D' claims)", (S/AC.26/1998/1), para. 128.

56/ The Panel notes that in the First "F2" Report, the "F2" Panel considered a claim by the Government of Jordan for the value of annual oil grants from the Government of Kuwait that were suspended immediately after Iraq's invasion of Kuwait and were never resumed. The "F2" Panel found that Jordan had a mere expectation that it would continue to receive oil grants, and that such expectation was not compensable. See the First "F2" Report, paras. 260 and 262.

57/ This USD figure is based on the Claimant's conversion of SYP 663,500,000.

58/ This USD figure is based on the Claimant's conversion of SYP 664,856,000.

59/ Although the Claimant mentions expenses for the construction of three refugee camps, the Panel does not consider such expenses as part of the claimed losses, because the Claimant states that such costs were covered by international assistance and does not specify a claimed amount for such expenses.

60/ The Third Report, para. 122.

61/ The Fourth Report, para. 140.

62/ Ibid., paras. 137-140. See also the Fifth Report, para. 59.

63/ This USD figure is based on the Claimant's conversion of SYP 5,200,000,000.

64/ This USD figure is based on the Claimant's conversion of SYP 5,215,000,000.

65/ See also the Second "E2" Report, para. 69.

66/ The First "C" Report, p. 62.

67/ Compare with the First "F2" Report, paras. 7-12 and 185-193. The Panel finds that the refugee and evacuee situation experienced in Syria after 2 August 1990 is distinguishable from the massive influx of approximately one million evacuees and returnees into Jordan as a result of Iraq's invasion and occupation of Kuwait. With regard to the particular circumstances relating to Jordan, the "F2" Panel considered that the massive influx of evacuees and returnees overwhelmed Jordan's ability to receive tourists at ports of entry and hindered the ability of tourists to travel within Jordan. The "F2" Panel consequently determined that there was a direct causal link between a decline in the number of tourists visiting Government tourist sites in Jordan and Iraq's invasion and occupation of Kuwait.

68/ Individuals, corporations and other non-Governmental entities, were required to file their loss of income claims in categories "C", "D" and "E".

69/ In a submission dated 24 January 1997, the Claimant mentioned building maintenance expenditures, but did not specifically claim for such expenditures. In any event, the submission was made after the 1 January 1997 deadline for new claims.

70/ The Third Report, paras. 114 and 115.

71/ The First Report, paras. 76-78. See also, the Third Report, para. 94; and the Fourth Report, para. 100.

72/ See also the Second "E2" Report, para. 69, in which the "E2" Panel reached this same conclusion.

73/ The First "C" Report, p. 62. This figure of 60,000 includes approximately 5,000 Turkish nationals.

74/ Compare with the First "F2" Report, paras. 7-12 and 185-193, referred to at note 67 above. The Panel finds that the refugee and evacuee situation experienced in Turkey after 2 August 1990 is distinguishable from the massive influx of approximately one million evacuees and returnees into Jordan as a result of Iraq's invasion and occupation of Kuwait.

75/ The claim was assigned UNCC Claim No. 5000148, and was reported in the "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E3' Claims", (S/AC.26/1998/13).

76/ The First "E2" Report, para. 90.

77/ Ibid., para. 72.

78/ See paragraph 6 of Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation", (S/AC.26/1992/9). See also the Fifth Report, para. 198.

79/ This loss type includes an interest component. See para. 33 of this Report.

Annex XV

Decision concerning the fifth instalment of F1 claims taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva[*]

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the fifth instalment of "F1" claims, covering 16 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the recommendations contained in paragraph 288 of the report, are as follows:

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[*] Previously issued as document S/AC.26/Dec.131 (2001).

1/ The text of the report appears in document S/AC.26/2001/15 (annex XIV above).

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Germany	1	-	130,906,469	4,931,828
Israel	1	-	1,060,300,000	74,563,000
Syrian Arab Republic	-	8	3,839,475,824	nil
Turkey	1	5	3,264,594,275	1,800
Total	3	13	8,295,276,568	79,496,628

3. Notes that no recommendation has been made for the portions of two claims referred to in notes six and seven of the report,

4. Reaffirms that when funds become available payments shall be made in accordance with decision 100 (S/AC.26/Dec.100 (2000)),

5. Recalls that when payments are made in accordance with decision 100, and pursuant to the terms of decision 18 (S/AC.26/Dec.18 (1994)), Governments shall distribute amounts received to the designated claimants in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

6. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex XVI

Report and recommendations made by the Panel of Commissioners concerning the first instalment of F4 claims*

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* Previously issued as document S/AC.26/2001/16.

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Introduction

1. At its thirtieth session held from 14 to 16 December 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed the "F4" Panel of Commissioners (the "Panel"), composed of Messrs. Thomas A. Mensah (Chairman), José R. Allen and Peter H. Sand, to review claims for losses resulting from environmental damage and the depletion of natural resources submitted by Governments under category "F" and by public sector enterprises under category "E" (the "'F4' claims").

2. This is the first report of the Panel to the Governing Council submitted pursuant to article 38(e) of the Provisional Rules For Claims Procedure (the "Rules") (S/AC.26/1992/10).

3. The report addresses the first instalment of "F4" claims, which includes 107 claims for monitoring and assessment of environmental damage, depletion of natural resources, monitoring of public health, and performing medical screenings for the purposes of investigation and combating increased health risks (the "monitoring and assessment claims") submitted by the Governments of the Islamic Republic of Iran ("Iran"), the Hashemite Kingdom of Jordan ("Jordan"), the State of Kuwait ("Kuwait"), the Kingdom of Saudi Arabia ("Saudi Arabia"), the Syrian Arab Republic ("Syria") and the Republic of Turkey ("Turkey") (collectively "the Claimants").

4. A summary of the monitoring and assessment claims submitted by each claimant country appears in table 1. The "amount claimed" column in table 1 shows the amount of compensation requested by the Claimants (including amendments) expressed in United States dollars ("USD") and, where necessary, corrected for arithmetic errors.

Table 1. Summary of first instalment monitoring and assessment claims

Country	Total number of claims	Amount claimed (USD)
Iran	40	42,951,383
Jordan	10	12,488,949
Kuwait	22	460,421,114
Saudi Arabia	24	482,156,943
Syria	10	5,623,885
Turkey	1	3,770,300
Total	107	1,007,412,574

I. BACKGROUND

A. Mandate of the Panel

5. The mandate of the Panel is to review the "F4" claims and recommend compensation, where appropriate.

6. Article 31 of the Rules sets out the law to be applied by the Panel in considering claims for compensation. It reads:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

7. Paragraph 16 of Security Council resolution 687 (1991) affirms that the Republic of Iraq ("Iraq") is "liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

8. In discharging its mandate, the Panel has borne in mind the statement of the Secretary-General of the United Nations, in his report of 2 May 1991 to the Security Council, that:

> "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element." ((S/22559), para. 20).

B. Compensable losses or expenses

9. Governing Council decision 7 (S/AC.26/1991/7/Rev.1) provides guidance regarding the losses or expenses that may be considered as "direct loss, damage, or injury" resulting from Iraq's invasion and occupation of Kuwait. Paragraph 34 of the decision states that "direct loss, damage, or injury" includes any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention.

10. Paragraph 35 of Governing Council decision 7 provides that "direct environmental damage and depletion of natural resources" includes losses or expenses resulting from:

(a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil in coastal and international waters;

(b) Reasonable measures already taken to clean and restore the environment or future measures which can be documented as reasonably necessary to clean and restore the environment;

(c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;

(d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage; and

(e) Depletion of or damage to natural resources.

11. Thus, monitoring and assessment expenses that qualify for compensation are those resulting from:

(a) Monitoring and assessment of environmental damage that is reasonable for any of the purposes specified in sub-paragraph (c) of paragraph 35 of Governing Council decision 7; and

(b) Monitoring of public health and performing medical screenings that is reasonable for any of the purposes set out in sub-paragraph (d) of paragraph 35 of the same decision.

II. OVERVIEW OF THE FIRST INSTALMENT OF "F4" CLAIMS

A. The claims

12. The first instalment of "F4" claims consists of monitoring and assessment claims submitted pursuant to paragraph 35 of Governing Council decision 7. A summary of the claims is given in table 1. The total compensation claimed is USD 1,007,412,574.

13. The Claimants seek compensation for expenses resulting from monitoring and assessment activities undertaken or to be undertaken to identify and evaluate damage or loss suffered by them as a result of Iraq's invasion and occupation of Kuwait. These activities relate to, inter alia, damage from air pollution; depletion of water resources; damage to groundwater; damage to cultural heritage resources; oil pollution in the Persian Gulf; damage to coastlines; damage to fisheries; damage to wetlands and rangelands; damage to forestry, agriculture and livestock; and damage or risk of damage to public health.

14. The Claimants allege that environmental damage, depletion of natural resources and increased health risks resulted from, inter alia:

(a) The release and transport, into the Claimants' territories, of airborne pollutants caused by oil fires resulting from the ignition of hundreds of oil wells in Kuwait by Iraqi forces during Iraq's invasion and occupation of Kuwait;

(b) Numerous oil rivers and lakes formed by oil from the destroyed oil wells that did not ignite;

(c) The release, by Iraqi forces, of millions of barrels of oil into the sea from oil pipelines, off-shore terminals and oil tankers;

(d) Disruption of fragile desert and coastal terrain caused by the movement of military vehicles and personnel, coupled with the construction of thousands of kilometres of military trenches and the emplacement of mines, weapons caches and other fortifications; and

(e) Adverse impacts on the environment resulting from the transit and settlement of the thousands of persons who departed from Iraq and Kuwait as a result of Iraq's invasion and occupation of Kuwait.

B. Priority given to monitoring and assessment claims

15. Prior to the expiration of the deadline established by the Governing Council, a number of governments submitted claims for environmental damage and the depletion of natural resources, including claims for compensation for expenses resulting from monitoring and assessment of such damage.

16. At the twenty-eighth session of the Governing Council, held on 29 June to 1 July 1998, Saudi Arabia, on behalf of itself, Iran, Jordan, Kuwait, and Syria, presented a proposal requesting the Governing Council to agree to a procedure under which awards for the monitoring and assessment claims would be made in advance of the review of the related substantive claims. Such advance awards would be made by the Governing Council on the basis of recommendations of the Panel.

17. The Governing Council, at its twenty-ninth session held on 28 to 30 September 1998, requested the Executive Secretary of the Commission (the "Executive Secretary") to invite the Claimants as well as other similarly situated claimant Governments, if any, to identify and file separately, within the period to be specified by the Executive Secretary, those portions of their claims already filed with the Commission that pertained to the monitoring and assessment of environmental damage. The Governing Council also decided that appropriate priority should be given to the processing of such claims, so that the claims could be resolved quickly and separately from the resolution of the related claims for environmental damage.

18. This report deals with the claims filed by six Governments, as listed in paragraph 3 above.

III. PROCEDURAL HISTORY

A. Article 16 reports

19. Pursuant to article 16 of the Rules, the Executive Secretary reported the claims to the Governing Council in the twenty-ninth report, dated 28 October 1999, and the thirty-first report, dated 28 April 2000, setting forth a number of factual and legal issues raised by the first instalment of "F4" claims and providing statistical information on these claims. These reports were circulated to all Governments and international organizations that had filed claims before the Commission and to Iraq. In accordance with paragraph 3 of article 16 of the Rules, a number of Governments, including Iraq, submitted views and additional information in relation to the reports.

B. Article 34 notifications

20. Following a preliminary review of the monitoring and assessment claims, the secretariat sent notifications pursuant to article 34 of the Rules to the Claimants in January 2000. The notifications requested Claimants to provide the following information relating to the status of the projects comprising the monitoring and assessment claims:

(a) Whether the studies had been completed;

(b) If a study had been completed, the date on which the results would be submitted to the Commission; and

(c) If a study had not been completed, the date on which it began, or was scheduled to begin, the date on which it would be completed, and the date on which the results would be submitted to the Commission.

C. Procedural Order No. 1

21. On 1 March 2000, the Executive Secretary submitted the first instalment of the "F4" claims to the Panel. On the same day, the Panel issued Procedural Order No. 1, in which it, inter alia, classified all the claims in the first instalment as "unusually large or complex", pursuant to article 38(d) of the Rules.

22. The Panel requested the secretariat to send Iraq a copy of the procedural order, together with one copy of the claim form, statement of claim and associated exhibits for each of the claims. The Panel further requested the secretariat to send a copy of Procedural Order No. 1 to the Claimants.

23. The secretariat transmitted a copy of Procedural Order No. 1 and copies of the other documents referred to in paragraph 22 to Iraq on 3 March 2000. The Government of Iraq submitted a response on 4 October 2000.

D. Oral proceedings

24. On 4 October 2000, the Commission received a request from Iraq for oral proceedings to be held on issues relating to the first instalment of "F4" claims.

25. In response to this request, the Panel issued Procedural Order No. 5, dated 18 October 2000, by which it informed Iraq and the Claimants of its decision to hold oral proceedings. The procedural order stated that the oral proceedings would be limited to the following two issues:

(a) Can the costs of research programmes, studies and procedures for the monitoring and assessment of environmental damage and depletion of natural resources qualify as "environmental damage and depletion of natural resources" in accordance with paragraph 16 of resolution 687 (1991)?

(b) If so, can any such costs qualify as direct damage or loss resulting from Iraq's invasion and occupation of Kuwait?

26. Oral proceedings were held at the Palais des Nations in Geneva, on 16 January 2001. Representatives of Iraq and the Claimants presented their views during the proceedings.

27. The views and comments of Iraq presented in its written response referred to in paragraph 23 and during the oral proceedings have been duly taken into account by the Panel. Where appropriate, these views and comments are referred to in this report.

IV. REVIEW OF MONITORING AND ASSESSMENT CLAIMS

A. Special aspects of monitoring and assessment claims

28. The monitoring and assessment claims reviewed in this report relate to expenses resulting from three different categories of activities, namely:

(a) Investigations to ascertain whether environmental damage or depletion of natural resources has occurred;

(b) Studies to quantify the loss resulting from the damage or depletion; and

(c) Assessment of methodologies to abate or mitigate the damage or depletion.

Some of the claims relate to activities falling into more than one of the above categories.

29. The monitoring and assessment claims present special problems in that they are being reviewed before decisions have been taken on the compensability of any substantive claims. Thus, the claims are being reviewed at a point where it may not have been established that environmental damage or depletion of natural resources occurred as a result of Iraq's invasion and occupation of Kuwait. Yet, the results of the monitoring and assessment activities may be critical in enabling claimants to establish the existence of damage and evaluate the quantum of compensation to be claimed. Hence, although it may be correct in some cases to say that a claimant is seeking compensation for monitoring and assessment without prior proof that environmental damage has in fact occurred, it would be both illogical and inequitable to reject a claim for reasonable monitoring and assessment on the sole ground that the claimant did not establish beforehand that environmental damage occurred. To reject a claim for that reason would, in effect, deprive the claimant of the opportunity to generate the very evidence that it needs to demonstrate the nature and extent of damage that may have occurred.

30. For that reason, the Panel does not consider that conclusive proof of environmental damage is a prerequisite for a monitoring and assessment activity to be compensable in accordance with paragraph 35 of Governing Council decision 7. In the view of the Panel, the purpose of monitoring and assessment is to enable a claimant to develop evidence to establish whether environmental damage has occurred and to quantify the extent of the resulting loss.

31. However, the Panel is of the view that compensation should not be awarded for monitoring and assessment activities that are purely theoretical or speculative, or which have only a tenuous link with damage resulting from Iraq's invasion and occupation of Kuwait. There should be a sufficient

nexus between the activity and environmental damage or risk of damage that may be attributed directly to Iraq's invasion and occupation of Kuwait. In assessing the strength of the nexus, and hence the reasonableness of the monitoring and assessment activity, the Panel has taken into account, inter alia, the following considerations:

(a) Whether there is a possibility that environmental damage or depletion of natural resources could have been caused as a result of Iraq's invasion and occupation of Kuwait. This entails an inquiry regarding the plausibility that pollutants released as a result of Iraq's invasion and occupation of Kuwait, or other effects of the invasion, could have impacted the territories of the Claimants;

(b) Whether the particular areas or resources in respect of which the monitoring and assessment activity is undertaken could have been affected by pollutants released as a result of Iraq's invasion and occupation of Kuwait, or other effects of the invasion. This entails, in appropriate cases, an examination of the possible pathways and media by which pollutants resulting from Iraq's invasion and occupation of Kuwait could have reached the areas or resources concerned;

(c) Whether there is evidence of environmental damage or risk of such damage as a result of Iraq's invasion and occupation of Kuwait; and

(d) Whether, having regard to the stated purpose of the monitoring and assessment activity and the methodologies to be used, there is a reasonable prospect that the activity will produce results that can assist the Panel in reviewing any related substantive claims.

32. In applying these considerations to determine the appropriateness of monitoring and assessment activities, due account needs to be taken of the particular circumstances of each case. Thus the possibility that a monitoring and assessment activity might not establish conclusively that environmental damage has been caused is not necessarily a valid reason for rejecting a claim for expenses resulting from that activity. In the view of the Panel, a monitoring and assessment activity could be of benefit even if the results generated by the activity establish that no damage has been caused. The same may be the case where the results indicate that damage has occurred but that it is not feasible or advisable to undertake measures of remediation or restoration. Confirmation that no damage has been caused or that measures of remediation or restoration are not possible or advisable in the circumstances could assist the Panel in reviewing related substantive claims. It could also be beneficial in alleviating the concerns of Claimants regarding potential risks of damage, and help to avoid unnecessary and wasteful measures to deal with non-existent or negligible risks.

33. A further complication presented by claims for monitoring and assessment of environmental damage and depletion of natural resources

results from the difficulty of ascertaining whether, and if so to what extent, damage identified by a monitoring and assessment activity is attributable to Iraq's invasion and occupation of Kuwait. In each of the claimant countries and in the region as a whole, there are natural and other phenomena that could result in environmental damage, depletion of natural resources or risks to public health of the same or similar type as those that are the subject of some of the claims. It is, therefore, possible that some of the damage revealed by monitoring and assessment activities resulted from causes other than the effects of Iraq's invasion and occupation of Kuwait. It is also possible that the cause of the damage was a combination of the effects of Iraq's invasion and occupation of Kuwait together with phenomena and activities that occurred before or after that event.

34. Moreover, in some of the countries there may not be adequately documented baseline information on the state of the environment or on conditions and trends regarding natural resources prior to Iraq's invasion and occupation of Kuwait. This may make it difficult in many cases to distinguish between damage attributable to Iraq's invasion and occupation of Kuwait and damage that may be due either to factors unrelated to Iraq's invasion and occupation or only partly attributable to Iraq's invasion and occupation. Where damage revealed by monitoring and assessment was not a direct result of Iraq's invasion and occupation of Kuwait, such damage would not be compensable in accordance with paragraph 35 of Governing Council decision 7. And where damage was caused partly by Iraq's invasion and occupation of Kuwait and partly by other factors, such damage may or may not be compensable. Yet the possibility that damage revealed by a monitoring and assessment activity could have been wholly or partly caused by factors unrelated to Iraq's invasion and occupation of Kuwait does not necessarily rule out compensation for that activity. Nor would monitoring and assessment be unreasonable solely because it might be difficult for the Claimant to differentiate damage resulting from Iraq's invasion and occupation of Kuwait from damage that may have resulted from other factors.

35. In deciding whether expenses incurred for a monitoring and assessment activity are compensable in accordance with paragraph 35 of Governing Council decision 7, the Panel considered, inter alia, the circumstances of the claim, including the nature of the damage to be assessed and the location and purpose of the monitoring and assessment activity and the appropriateness of the activity by reference to generally accepted scientific criteria and methodologies. Each claim has been reviewed on its own merits. In particular, the Panel has considered whether there was evidence that the activity proposed or undertaken could produce information that might be helpful in identifying environmental damage and depletion of natural resources, or that could offer a useful basis for taking preventive or remedial measures.

B. Relationship among claims

36. A number of the monitoring and assessment claims are closely related to each other. In some cases, this results from the separation of monitoring and assessment claims from the related substantive claims because, in submitting monitoring and assessment claims separately from the substantive claims, some Claimants have formulated each monitoring and assessment activity as an independent claim with its own budget.

37. The Panel believes that, in some cases, savings can be achieved by co-ordinating activities of a claimant relating to the same subject matter. In such cases, the Panel has suggested co-ordination of the relevant activities. Where the Panel has found that the costs of a particular activity can be reduced by using personnel or resources available for another activity or information available elsewhere, it has taken the possible savings into account in recommending the compensation to be awarded.

38. Most of the monitoring and assessment claims are related to substantive claims for environmental damage and depletion of natural resources because the Claimants expect to use information obtained from the monitoring and assessment activities to support their substantive claims. The Panel stresses that its recommendations on monitoring and assessment claims do not in any way prejudge its findings on related substantive claims that it may review subsequently. Each substantive claim will be reviewed on its own merits on the basis of the evidence presented to support it.

39. However, the Panel anticipates that the results of some monitoring and assessment activities will assist its review of related substantive claims. It recalls that the Governing Council's decision to authorize expedited review of monitoring and assessment claims was, in large part, intended to make funds available to claimants to finance activities that might produce information to support their substantive "F4" claims. The Panel, therefore, emphasizes the importance of early submission of the results of monitoring and assessment activities for which compensation is awarded.

40. The Panel also notes that some of the monitoring and assessment activities may need to be conducted for several years. In certain circumstances, the Panel has recommended awards of compensation for monitoring and assessment activities even though the results of the activities may not become available in time for use in the review of any substantive claims or may not be needed for such review. However, where preliminary results of long-term monitoring and assessment that could be helpful in the review of related substantive claims become available, the Claimant should make every effort to bring them to the attention of the Panel as soon as possible.

C. The review process

41. Article 36 of the Rules provides that a panel of Commissioners may "(a) in unusually large or complex cases, request further written submissions and invite individuals, corporations or other entities, Governments or international organizations to present their views in oral proceedings; [and] (b) request additional information from any other source, including expert advice, as necessary". Article 38(b) of the Rules provides that a panel of Commissioners "may adopt special procedures appropriate to the character, amount and subject-matter of the particular types of claims under consideration".

42. In evaluating the scientific and technical appropriateness of monitoring and assessment activities and assessing the reasonableness of the expenses claimed, the Panel was assisted by expert consultants retained by the Commission. In view of the complexity of the issues and the need to consider scientific, legal, social, commercial and accounting issues in evaluating the claims and assessing the amounts of compensation, the Panel considered it desirable and necessary to have the assistance of a multi-disciplinary team of experts. Expert consultants were retained in, inter alia, the following fields: chemistry; toxicology; biology (including microbiology, marine biology, biological oceanography, marine zoology and plant pathology); medicine; epidemiology; environmental, ecological and natural resource economics; geology (including geochemistry, hydrology, geo-ecology); atmospheric sciences; oil spill assessment and response; rangeland management; and accounting.

43. The expert consultants prepared professional judgement reports on all the monitoring and assessment activities for which compensation was sought. Each report included the opinion of the expert consultants regarding the appropriateness of the activity by reference to generally accepted scientific criteria, standards and methodologies. The reports also contained the expert consultants' evaluation of the reasonableness of the costs claimed, having regard to the results likely to be produced. Where appropriate, the expert consultants suggested modifications to the activities proposed or adjustments to the cost estimates presented.

44. The Panel also requested information from a number of international organizations, agencies and individual experts on issues regarding environmental damage and depletion of natural resources relevant to the claims including compensation for oil pollution damage; air quality monitoring and modelling; hydrogeology and groundwater pollution; soil remediation techniques; public health and epidemiology; and environmental and ecological economics.

45. In addition, the Panel requested additional information from the Claimants in order to clarify ambiguities or to amplify information regarding their claims. At the request of the Panel and in accordance with

its instructions, members of the secretariat and, where appropriate, the Panel's expert consultants held discussions with representatives of the Claimants in order to obtain such information.

46. In reaching its findings and formulating its recommendations on the claims, the Panel has taken due account of all the information and evidence made available to it, including the materials provided by the Claimants in the claim documents and in response to requests for additional information; the written responses submitted by Iraq; the views presented by Iraq and the Claimants during the oral proceedings; the reports of the Panel's expert consultants; and information and views received from the experts and organizations referred to in paragraph 44 above.

47. Where the Panel has found that modifications to monitoring and assessment activities are necessary or desirable, it has provided details of those modifications. These details are set out in the relevant parts of this report or in the technical annexes.

48. In the cases where the Panel found the cost estimates to be unreasonable, it made adjustments to the amounts claimed. In determining standard rates, the Panel reviewed information provided by its expert consultants concerning applicable rates, having regard to, inter alia, the location and nature of the tasks to be undertaken. In each case, the Panel assured itself that the adjustments would not prejudice the ability of the Claimant to achieve the objectives stated in the claim.

49. The Panel's findings and recommendations on each claim are based on its assessment of the totality of evidence presented.

D. Evidentiary requirements

50. Article 35(1) of the Rules provides that "[e]ach claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)". Article 35(1) also provides that it is for each panel to determine "the admissibility, relevance, materiality and weight of any documents and other evidence submitted".

51. Article 35(3) of the Rules provides that category "F" claims "must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". The Governing Council emphasized the mandatory nature of this requirement in paragraph 37 of decision 7: "Since these [category "F"] claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss." In addition, Governing Council decision 46 states that, for category "F" claims, "no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the

claimant" (S/AC.26/1998/46). In this decision, the Governing Council also reaffirmed that, pursuant to article 31 of the Rules, the amounts recommended by the panels of Commissioners "can only be approved when they are in accordance with this decision".

52. In some claims, the Panel has found that a monitoring and assessment activity is reasonable in accordance with paragraph 35 of Governing Council decision 7 but has, nevertheless, recommended either that no compensation should be awarded or that compensation be awarded in an amount less than what was sought by the Claimant. For claims concerning monitoring and assessment activities already completed, no compensation has been recommended if the evidence presented to the Panel was not sufficient to demonstrate that the amounts claimed were in fact expended. For activities that are yet to be undertaken, the Panel has recommended compensation only where sufficient evidence has been provided.

E. Location of the damage

53. Some of the monitoring and assessment claims relate to environmental damage alleged to have occurred outside Kuwait or Iraq, specifically in the territories of Iran, Jordan, Saudi Arabia, Syria, and Turkey. Neither Security Council resolution 687 (1991) nor any decision of the Governing Council restricts eligibility for compensation to damage that occurred in Kuwait or Iraq. In this regard, the Panel notes that the "E2" Panel of Commissioners stated in its second report, that "the place where the loss or damage was suffered by the claimant is not in itself determinative of the Commission's competence" (Report and Recommendations made by the panel of Commissioners concerning the second instalment of "E2" claims, S/AC.26/1999/6, para. 54).

54. The Panel agrees with this view. Accordingly, it has concluded that expenses resulting from reasonable monitoring and assessment of loss or damage that may have occurred outside Iraq or Kuwait are, in principle, compensable in accordance with paragraph 35 of Governing Council decision 7.

F. Analysis of claims and recommendations

55. The Panel's analysis of the first instalment claims is set forth in the sections V through X of this report. There are separate sections for each claimant country, which are divided into subsections that describe each of the monitoring and assessment claims in the instalment, review their scientific and technical merits, analyse their cost-reasonableness, and report the Panel's recommendations regarding compensation. Additional technical recommendations are contained in technical annexes at the end of the report.

V. MONITORING AND ASSESSMENT CLAIMS OF THE ISLAMIC REPUBLIC OF IRAN

Table 2. Iran's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)
5000329	Transport and Dispersion of Pollution	432,983
5000330	Transport and Dispersion of Pollution	1,984,660
5000331	Cultural Heritage	43,605
5000446	Cultural Heritage	2,734,600
5000447	Cultural Heritage	2,716,200
5000341	Cultural Heritage	783,300
5000342	Cultural Heritage	472,800
5000343	Groundwater and Surface Water	785,000
5000347	Marine and Coastal	822,400
5000349	Marine and Coastal	363,537
5000350	Marine and Coastal	822,500
5000351	Marine and Coastal	454,500
5000352	Marine and Coastal	488,630
5000344	Marine and Coastal	686,100
5000345	Marine and Coastal	143,600
5000346	Marine and Coastal	4,208,900
5000348	Marine and Coastal	594,000
5000386	Marine and Coastal	826,000
5000387	Marine and Coastal	1,035,000
5000382	Marine and Coastal	3,686,520
5000388	Marine and Coastal	178,400
5000389	Marine and Coastal	842,500
5000383	Marine and Coastal	375,700
5000384	Marine and Coastal	412,000
5000385	Marine and Coastal	865,400
5000424	Terrestrial	703,870
5000425	Terrestrial	431,000
5000420	Terrestrial	980,409
5000421	Terrestrial	871,930
5000422	Terrestrial	632,000
5000426	Terrestrial	1,037,000
5000427	Terrestrial	1,489,100
5000428	Terrestrial	2,054,600
5000423	Departure of persons from Iraq or Kuwait	678,100
5000390	Public Health	899,000
5000391	Public Health	1,468,819
5000392	Public Health	1,926,220
5000393	Public Health	449,000
5000394	Public Health	2,112,500
5000395	Public Health	459,000
Total		42,951,383

A. Overview

56. Iran submitted a consolidated claim for monitoring and assessment of environmental damage, depletion of natural resources and public health damage that it alleges it suffered as a result of Iraq's invasion and occupation of Kuwait. It states that Iraq's detonation of oil wells in Kuwait resulted in the release of more than 760,000 tons of smoke into the atmosphere. Over 280,000 tons of highly toxic pollutants were dispersed by air and deposited on Iranian territory, particularly the southern provinces of the country. According to Iran, over 15 million people inhaled the toxic smoke for more than 250 days. Iran further alleges that one third of its freshwater resources, its largest agricultural lands, and its most important archaeological sites are located in those provinces and were affected by the pollutants.

57. Iran further alleges that millions of barrels of crude oil were deliberately released into the Persian Gulf by Iraq's forces, and that this resulted in serious damage to the Persian Gulf's fragile ecosystem and to the natural resources of Iran.

58. Finally, Iran alleges that the damage caused to the environment will continue to have adverse impacts on its marine environment, fisheries, water resources, terrestrial environment, agricultural lands, rangelands and forests, cultural heritage sites and public health. The monitoring and assessment would enable it to evaluate the extent of the damage and to determine the most appropriate measures to abate the harm and restore the environment.

59. Iraq argues in its written response, inter alia, that Iran has failed to show that it has suffered any direct damage as a result of Iraq's invasion and occupation of Kuwait. In addition, Iraq contends that, because of the direction of the prevailing winds in the region, the smoke plume rarely reached Iranian territory. It further contends that only the "thin part" of the plume reached the coast of Iran, and just for a short period. Iraq also argues that because no sampling was conducted in Iran in 1991, Iran has no scientific basis for claiming that any damage is attributable to its actions.

60. Iraq reiterated these contentions during the oral proceedings.

61. The Panel has noted the views of Iraq. However, as indicated in paragraphs 29 and 30, it does not consider that a claimant is required to prove the existence of any specific damage before submitting a claim or claims for monitoring and assessment of environmental damage and depletion of natural resources. Moreover, as noted in the sections that follow, there is ample evidence that pollutants from the oil fires in Kuwait reached some parts of Iran and that the territory of Iran was exposed to the oil spill in

the Persian Gulf that resulted from Iraq's invasion and occupation of Kuwait.

B. Transport and dispersion of pollution

1. Claim No. 5000329

62. Iran seeks compensation in the amount of USD 432,983 for a completed study that used satellite imagery analysis and related methodologies to track the transport of airborne pollutants from the oil fires in Kuwait and the spilled oil in the Persian Gulf that resulted from Iraq's invasion and occupation of Kuwait. The purpose of the study was to determine whether and to what extent airborne pollutants from the oil fires and spilled oil reached the territory of Iran.

63. There is evidence in the scientific literature that emissions from the oil fires reached some parts of Iran. It is, therefore, likely that some airborne pollutants from the oil fires reached the ground in Iran, mainly through wet deposition. There is also evidence that the territory of Iran was affected by the oil spill in the Persian Gulf. It was, therefore, appropriate for Iran to attempt to determine whether pollutants from the oil fires and the spilled oil reached its territory.

64. Accordingly, the Panel finds that the study constituted reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

65. Iran submitted documentary evidence in support of costs incurred for 1,200 AVHRR images purchased from the International Institute for Aerospace Survey and Earth Sciences. An Advanced Very High Resolution Radiometer ("AVHRR") is an instrument carried on earth-orbiting meteorological satellites, which is used to map clouds, sea surface temperature, and some topographic features by sensing visible and near-infrared radiation. The Panel finds that the USD 120,000 claimed for the purchase of the AVHRR images is reasonable and adequately supported.

66. Iran also submitted documentary evidence in support of costs for the purchase of satellite image processing equipment and related training, and computer hardware and software. These costs totalled USD 140,000. By Procedural Order No. 2, dated 10 May 2000, the Panel requested Iran to provide, inter alia, an explanation of the need for the purchase of satellite reception equipment and the training of personnel on the use of this equipment, given that Iran had already purchased satellite images from the International Institute for Aerospace Survey and Earth Sciences. Iran did not respond to the procedural order. The Panel, therefore, finds that Iran has failed to meet the evidentiary requirements for compensation for these items.

67. Procedural Order No. 2 also requested Iran to provide documentary and other appropriate evidence in support of the expenses claimed for labour, travel, purchase of maps, printing, and miscellaneous items. The Panel did not receive this information in time to take it into account in its review of the claim. Consequently, the Panel finds that Iran has failed to meet the evidentiary requirements for compensation for these items.

68. Accordingly, the Panel does not recommend any compensation for the expenses referred to in paragraphs 66 and 67. Hence the only compensable expenditure is the amount referred to in paragraph 65.

69. The Panel, therefore, recommends compensation in the amount of USD 120,000 for this claim.

70. The date of loss for this claim (for the purpose explained in paragraph 777) is 28 May 1998.

2. Claim No. 5000330

71. Iran seeks compensation in the amount of USD 1,984,660 for a project to develop a computer-based model of the transport of air pollutants from the oil fires in Kuwait. The model would use an adjusted meso-scale atmospheric model for the region and a specialized air quality model to analyse atmospheric pollutants. (The term "meso-scale" refers to models that include effects of smaller meteorological frontal or pressure systems and that evaluate spatial grids ranging from 1 to 100 kilometres.) The project is intended to determine the short-term effects that wet and dry deposition of pollutants resulting from Iraq's invasion and occupation of Kuwait may have had on various types of vegetation in Iran.

72. The Panel considers that, given the lack of monitoring data collected in Iran at the time of the oil fires, it is reasonable for Iran to attempt to estimate the amount of air pollution that affected ground level receptors in its territory. The Panel appreciates that computer models of atmospheric transport of pollutants can only provide general guidance and cannot be used either to establish that pollution from the oil fires affected ground level receptors or to provide an accurate quantitative estimate of exposure. Nonetheless, these models can provide useful information concerning the transport and dispersion of air pollutants.

73. In the Panel's opinion, a competent computer modelling analysis could provide some useful guidance about the exposure of Iran to pollution from the oil fires. However, to succeed within a period of one to two years, such a modelling analysis would need to build upon existing models, rather than upon a newly constructed computer model. In this regard, the Panel notes that excellent meso-scale models already exist and are available for public use.

74. The Panel finds that a project using analyses of existing computer models is a reasonable attempt to determine the transport and dispersion of pollutants in Iran from the oil fires. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

75. However, the Panel considers that the modelling analysis should be supplemented by the collection of additional data, particularly data on "black rain" and "black snow". Such data would enable Iran to verify the results of the modelling effort.

76. In addition, account should be taken of data obtained from soil core samples in other monitoring and assessment projects in Iran, particularly claim Nos. 5000347 and 5000425 (paras. 113-118 and 218-222, respectively). Details of the suggested modifications are set out in annex I to this report.

77. Following a review of the cost estimates presented by Iran, the Panel has concluded that a much smaller amount would be sufficient to enable Iran to undertake a competent computer modelling analysis based on existing computer models, coupled with the collection and analysis of data on black rain and snow. The Panel's estimate of a reasonable cost of the project is USD 672,960.

78. The Panel, therefore, recommends compensation in the amount of USD 672,960 for this claim.

C. Impacts on cultural heritage materials and sites

1. Claim No. 5000331

79. Iran seeks compensation in the amount of USD 43,605 for preliminary monitoring studies that were conducted to evaluate damage that might have been caused to cultural relics in Iran by pollutants from the oil fires in Kuwait.

80. The only evidence provided by Iran to support the claim was a series of letters ordering individuals to travel to certain areas of the country to undertake a variety of activities in late 1997 and 1998. According to the letters, the purpose of the trips was to study, sample and photograph certain cultural relics and prepare reports on the extent of damage caused to those relics as a result of Iraq's invasion and occupation of Kuwait. Iran did not provide a description of the activities undertaken or the methodologies used for the studies. No reports or other evidence were submitted to show that any work had been undertaken.

81. By Procedural Order No. 2, dated 10 May 2000, the Panel requested Iran to provide, inter alia, information regarding the number of preliminary studies conducted, the dates on which they were conducted, their objectives,

the reports containing the results of the studies, and documentary and other appropriate evidence in support of the costs claimed. The Panel did not receive this information in time to take it into account during its review of the claim.

82. The Panel, therefore, finds that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

83. Accordingly, no compensation is recommended for this claim.

2. Claim No. 5000446

84. Iran seeks compensation in the amount of USD 2,734,600 for five studies to determine the extent of deterioration that may have been caused to certain outdoor cultural heritage materials in Iran by pollutants from the oil fires in Kuwait. These cultural heritage materials include stone relics in Persepolis; tilework in Eşfahan and Kermân; wall paintings in Eşfahan, Fârs and Yazd; construction materials at the Tchoga Zanbil Ziggurat in Khûzestân; and construction materials, archaeological sites and artefacts in Susa. Some wall paintings referred to herein are located outdoors, while others are indoors.

85. As previously noted (para. 63), there is evidence in the scientific literature that emissions from the oil fires reached some parts of Iran. It is, therefore, likely that some airborne pollutants from the oil fires reached the ground in Iran, mainly through wet deposition. In the Panel's opinion, although the probability of identifying damage to the outdoor cultural heritage materials by airborne pollutants from the oil fires, and differentiating such damage from other sources, is low, this cannot be ruled out completely.

86. The Panel considers that it is appropriate for Iran to attempt to determine whether any damage to outdoor cultural heritage materials occurred as a result of the oil fires. The results of the studies could be useful not only for evaluating the extent of damage suffered by the outdoor cultural heritage materials, but also in determining whether there is any need for abatement or restoration measures.

87. The Panel finds that the studies constitute reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

88. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex II to this report.

89. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The number of person-months of labour has been reduced with a consequential decrease in labour costs;

(b) The number and, therefore, cost of analytic tests has been reduced by 80 per cent; and

(c) The preparation of educational handbooks and the training of technicians and staff in the field of hazard preparedness and management have been eliminated because these activities are not necessary for the studies.

These adjustments reduce the estimated cost to USD 1,398,100.

90. The Panel, therefore, recommends compensation in the amount of USD 1,398,100 for this claim.

3. Claim No. 5000447

91. Iran seeks compensation in the amount of USD 2,716,200 for four studies to determine the extent of deterioration that may have been caused to certain indoor cultural heritage materials in its territory by pollutants from the oil fires in Kuwait. The cultural heritage materials include manuscripts and books in libraries and museums; bronze and iron objects in museums and collections; textile artefacts in museums and repositories; and easel paintings in museums and repositories.

92. As previously noted (para. 63), there is evidence that pollutants from the oil fires reached the ground in parts of Iran, mainly through wet deposition. However, damage to indoor cultural heritage materials is likely to be much less than damage to outdoor materials, because indoor materials are not exposed to air pollution to the same extent.

93. The Panel notes that, as with the outdoor cultural heritage materials, the probability of identifying damage caused by airborne pollutants from the oil fires and differentiating such damage from damage from other sources is low. Indeed, the probability is even lower in the case of indoor materials.

94. Nonetheless, there is the possibility of some exposure of the material to airborne pollutants from the oil fires; and it is appropriate for Iran to attempt to determine the existence and extent of damage that may have been caused. Moreover, the results of the studies may be useful for establishing the possible need for abatement and restoration measures.

95. For these reasons, the Panel finds that the studies constitute reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

96. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex III to this report.

97. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The overall scope of the studies has been substantially reduced to reflect a more focussed approach in the selection of sites and materials;

(b) The number of person-months of labour has been substantially reduced with a consequential decrease in labour costs;

(c) The number and, therefore, cost of analytic tests has been reduced by 80 per cent; and

(d) The preparation of educational handbooks and the training of technicians and staff in the field of hazard preparedness and management have been eliminated because these activities are not necessary for the studies.

These adjustments reduce the estimated cost to USD 575,000.

98. The Panel, therefore, recommends compensation in the amount of USD 575,000 for this claim.

4. Claim No. 5000341

99. Iran seeks compensation in the amount of USD 783,300 for a study to determine damage that may have been caused to unexcavated archaeological sites in the southern part of its territory by pollutants from the oil fires in Kuwait.

100. In the Panel's opinion, the unexcavated sites are likely to have had significantly less, if any, exposure to airborne pollutants from the oil fires than outdoor or indoor cultural heritage materials. Iran has developed neither a methodology for the study nor a procedure for selecting sites for damage assessment and unaffected control sites.

101. The Panel, therefore, finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

102. Accordingly, the Panel recommends no compensation for this claim.

5. Claim No. 5000342

103. Iran seeks compensation in the amount of USD 472,800 for a project to assess the susceptibility of museums and archaeological sites to sudden increases of pollutants and to develop strategies for air pollution control in museums and repositories in Iran. According to Iran, the purpose of the

project is to prepare a blueprint for measures to protect and preserve historic cultural objects from future pollution.

104. In the opinion of the Panel, the project is intended to establish a system to prevent future damage, rather than to evaluate or abate harm that may have been caused as a result of Iraq's invasion and occupation of Kuwait. Hence this project does not qualify as reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

105. Accordingly, no compensation is recommended for this claim.

D. Impacts on groundwater and surface water

Claim No. 5000343

106. Iran seeks compensation in the amount of USD 785,000 for a project to assess the extent of groundwater pollution by hydrocarbons and related heavy metals that may have been caused by deposition of pollutants from the oil fires in Kuwait. The project would also estimate costs of groundwater remediation.

107. According to Iran, the project would use a "tiered approach" in which areas in the southern region of Khuzestan suspected to have been affected by hydrocarbon and heavy metal contamination would be identified, sampled and classified as "low contamination" or "high contamination" zones. Groundwater in zones classified as highly contaminated would be further sampled. The data generated by the further sampling would be analysed and mapped with Geographic Information System ("GIS") methods. Transport modelling would be used to verify the results of the sampling and to assess the behaviour of pollutants in groundwater over a given period.

108. As previously noted (para. 63), evidence in the scientific literature indicates that airborne pollutants from the oil fires passed over parts of Iran. It is, therefore, likely that some of these pollutants reached the ground in Iran, mainly through wet deposition. Although the probability of identifying incremental damage to the groundwater aquifers caused specifically by the deposition of pollutants from the oil fires is low, this cannot be ruled out completely.

109. The Panel finds that the project is an appropriate attempt to determine whether pollutants from the oil fires had any adverse effects on the groundwater aquifers in Iran. Thus the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

110. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex IV to this report.

111. In addition, the Panel has adjusted the cost of labour by substantially reducing the number of person-months of labour required. This adjustment reduces the estimated cost to USD 371,656.

112. The Panel, therefore, recommends compensation in the amount of USD 371,656 for this claim.

E. Impacts on the marine and coastal environment

1. Claim No. 5000347

113. Iran seeks compensation in the amount of USD 822,400 for a project to investigate the natural revegetation capacities of mangrove trees and bioaccumulation of toxic heavy metals and oil-related hydrocarbons in mangroves in areas of the northern Persian Gulf that may have been affected by pollutants released as a result of Iraq's invasion and occupation of Kuwait.

114. As previously noted (para. 63), there is evidence in the scientific literature that pollutants from the oil spill and oil fires reached parts of Iran. There is also evidence that such pollutants can have deleterious impacts on mangrove trees. These effects can become chronic for all growth stages of the trees if the pollutants permeate soft, anaerobic sediments and are subsequently released. Hence, mangrove trees along the Iranian coast could have been adversely affected by exposure to oil pollution. Therefore, an attempt to ascertain the existence and extent of any such effects is appropriate.

115. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

116. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex V to this report.

117. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The costs of certain analytical work have been eliminated because Iran informed the Panel that it will not be undertaken;

(b) The costs of laboratory services have been adjusted to allow for petroleum fingerprinting analysis using gas chromatography/mass spectrometry;

(c) The cost of equipment has been reduced because Iran has indicated that some equipment purchased for another project will be used;

(d) The amount of labour for research personnel has been reduced with a consequential decrease in labour costs; and

(e) The costs of attendance at seminars have been eliminated because the Panel does not consider that attendance at seminars is necessary.

These adjustments reduce the estimated cost to USD 711,200.

118. Accordingly, the Panel recommends compensation in the amount of USD 711,200 for this claim.

2. Claim No. 5000349

119. Iran seeks compensation in the amount of USD 363,537 for a project to determine the current status of indicator microfaunal species and the natural recovery and remediation capacities of polluted marine environments. The purpose of the project would be to determine the extent of long-term damage to the marine environment of Iran that may have resulted from Iraq's invasion and occupation of Kuwait.

120. As previously noted (para. 63), there is evidence that the coast of Iran was exposed to oil pollution resulting from Iraq's invasion and occupation of Kuwait. There is also evidence in the scientific literature that oil pollution can have adverse effects on intertidal organisms and may cause alterations in intertidal communities, including reductions in stocks and changes in trophic structure.

121. The Panel considers that it is appropriate for Iran to attempt to find out whether any long-term damage was caused to its marine environment by the oil pollution.

122. Accordingly, the Panel finds that the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

123. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex VI to this report.

124. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The cost of labour has been reduced to take account of the decrease in research work; and

(b) The amount claimed for the purchase of binocular microscopes has been reduced.

These adjustments reduce the estimated cost to USD 263,037.

125. Accordingly, the Panel recommends compensation in the amount of USD 263,037 for this claim.

3. Claim No. 5000350

126. Iran seeks compensation in the amount of USD 822,500 for a project to assess coral reefs under its jurisdiction that may have been affected by oil pollution resulting from Iraq's invasion and occupation of Kuwait. The project would involve assessment of the current status of these reefs, recovery rate of damaged coral reefs, feasibility studies on restoration techniques and a pilot restoration programme.

127. There is evidence in the scientific literature that coral reefs can be damaged by oil pollution. Iran's marine resources were exposed to pollution resulting from Iraq's invasion and occupation of Kuwait, and Iran's coral reefs may have been affected by either the oil spill or deposition of airborne pollutants from the oil fires, or both. Accordingly, it is appropriate for Iran to attempt to identify and assess damage that may have been caused to the coral reefs.

128. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

129. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex VII to this report.

130. In addition, the Panel has adjusted the estimated cost by eliminating the costs of a "mini transport and a research submarine transport system", scuba diving, and submarine pilot courses because they are unnecessary. These adjustments reduce the estimated cost to USD 661,140.

131. Accordingly, the Panel recommends compensation in the amount of USD 661,140 for this claim.

4. Claim No. 5000351

132. Iran seeks compensation in the amount of USD 454,500 for a project to assess long-term changes to seagrass beds under its jurisdiction in the Persian Gulf that may have been caused by oil pollution resulting from Iraq's invasion and occupation of Kuwait. According to Iran, the project would involve the collection of information on the concentration of pollutants in underlying sediments.

133. There is evidence in the scientific literature that seagrass communities, which constitute an important and productive element of coastal ecosystems, are vulnerable to oil pollution. Oil retained in sediments can have a toxic effect on organisms burrowing in or living on the surface sediment. These organisms are an important component of seagrass

ecosystems. As previously noted, there is evidence that the Iranian coastline was exposed to oil pollution resulting from Iraq's invasion and occupation of Kuwait. As a result, seagrass communities along the coastline could have been damaged. It is, therefore, appropriate for Iran to attempt to assess damage that may have been caused to the seagrass beds.

134. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

135. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex VIII to this report.

136. In addition, the Panel has reduced the total amount of labour required with a consequential decrease in labour costs. This adjustment reduces the estimated cost to USD 157,776.

137. Accordingly, the Panel recommends compensation in the amount of USD 157,776 for this claim.

5. Claim No. 5000352

138. Iran seeks compensation in the amount of USD 488,630 for a project to select the most cost-effective method of restoring mangrove forests in its territory that may have been damaged as a result of Iraq's invasion and occupation of Kuwait.

139. As previously noted (para. 114), oil pollution can cause damage to mangrove forests at all growth stages. Such damage can become chronic if oil permeates soft, anaerobic sediments and is subsequently released. In the Panel's view, mangrove forests along the Iranian coast could have been affected by exposure to oil pollution resulting from Iraq's invasion and occupation of Kuwait. It is therefore appropriate for Iran to attempt to assess the means of restoring forests that may have been damaged.

140. In this connection the Panel notes that some of these mangrove forests are located in areas listed as wetlands of international importance under the 1971 Ramsar Convention (Convention on Wetlands of International Importance especially as Waterfowl Habitat, United Nations Treaty Series, vol. 996, No. 14583, p. 245).

141. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

142. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex IX to this report.

143. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The cost of labour has been reduced to reflect a decrease in the amount of labour required;

(b) The cost of an irrigated nursery has been reduced; and

(c) The cost of transportation has been corrected as indicated by Iran.

These adjustments reduce the estimated cost to USD 357,730.

144. Accordingly, the Panel recommends compensation in the amount of USD 357,730 for this claim.

6. Claim No. 5000344

145. Iran seeks compensation in the amount of USD 686,100 for a project to monitor plant community characteristics in areas of the Shadegan Wetland in Iran that may have been polluted as a result of Iraq's invasion and occupation of Kuwait. The purpose of the project would be to determine natural revegetation capacities and production capabilities of dominant plant species. It would also provide information that would serve as the basis for restoration activities, quantification of other environmental damage claims and calculation of the economic value of lost ecosystem resources.

146. There is evidence that the Shadegan Wetland was exposed to oil pollution resulting from Iraq's invasion and occupation of Kuwait. Wetlands provide a variety of important ecological functions that can be impaired or destroyed by oil pollution. In particular, oil can have a toxic effect on vegetation and alter an ecosystem's community structure. It is, therefore, appropriate for Iran to attempt to assess the nature of any damage that may have been caused.

147. The Panel notes that the Shadegan Wetland is listed as a wetland of international importance under the 1971 Ramsar Convention (Convention on Wetlands of International Importance especially as Waterfowl Habitat, United Nations Treaty Series, vol. 996, No. 14583, p. 245).

148. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

149. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex X to this report.

150. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The cost of labour has been reduced to reflect a decrease in the scope of the project indicated by Iran;

(b) The cost of the microscope has been eliminated because Iran has stated that it will not be purchased; and

(c) A laboratory bench fee has been eliminated because it is unnecessary.

These adjustments reduce the estimated cost to USD 489,750.

151. Accordingly, the Panel recommends compensation in the amount of USD 489,750 for this claim.

7. Claim No. 5000345

152. Iran seeks compensation in the amount of USD 143,600 for a project to assess the impacts of Iraq's invasion and occupation of Kuwait on wetland bird populations in Iran by collecting and comparing current population data with pre-invasion data. The project also would assist efforts to restore wetlands and bird populations that may have been harmed by pollution resulting from Iraq's invasion and occupation of Kuwait.

153. The available evidence suggests that wetland birds in Iran are likely to have been exposed to pollution resulting from Iraq's invasion and occupation of Kuwait. In the opinion of the Panel, the project is a reasonable attempt to evaluate the reduction in wetland bird populations that may have resulted from the pollution and to identify measures needed to restore the bird populations of Iranian wetland areas.

154. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

155. The Panel finds the amount claimed reasonable and accordingly recommends compensation in the amount of USD 143,600 for this claim.

8. Claim No. 5000346

156. Iran seeks compensation in the amount of USD 4,208,900 for a project to determine the current status of Iranian fishery resources that may have been damaged by pollution resulting from Iraq's invasion and occupation of Kuwait and to provide information that may assist in restoration and rehabilitation of these resources. The project would involve an evaluation of the bioaccumulation rate of pollutants in fishery species and impacts to the fishery stock, and attempt to develop a reliable estimate of recovery rates.

157. As previously noted, there is evidence that Iranian coastal areas, fisheries resources and marine ecosystems were exposed to oil pollution that resulted from Iraq's invasion and occupation of Kuwait. There is evidence in the scientific literature that petroleum hydrocarbons can have many adverse impacts on fish, including mortality, defects in reproduction such as reduced fertility and reduced hatching success, reduced growth rates, and reduced survival of eggs and juveniles. This can have long-term adverse effects on fisheries stocks.

158. In the Panel's view, the objectives of the project are appropriate, given the dearth of information available on the state of Iran's fisheries resources before and after Iraq's invasion and occupation of Kuwait.

159. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, expenses of the project qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

160. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex XI to this report.

161. As a result of the modifications, the Panel has adjusted the cost of labour. This adjustment reduces the estimated cost to USD 2,908,274.

162. The Panel, therefore, recommends compensation in the amount of USD 2,908,274 for this claim.

9. Claim No. 5000348

163. Iran seeks compensation in the amount of USD 594,000 for a project to identify and assess the presence of pollutants, such as petroleum hydrocarbons and trace metals, in a variety of fish species in Iranian waters resulting from the pollution from Iraq's invasion and occupation of Kuwait. According to Iran, the project would seek to establish, through chemical analyses and physiological tests, the link between the concentration of hydrocarbon pollutants in soil sediments and the concentration of such pollutants in fish tissues. In addition, Iran plans to assess the short-term and long-term effects of Kuwait crude oil on selected species in its marine environment.

164. As previously noted, there is evidence that Iran's marine environment was exposed to pollution resulting from Iraq's invasion and occupation of Kuwait. In the Panel's opinion, an attempt by Iran to determine the impact of the oil spill and atmospheric deposition of pollutants on fish species is appropriate. In this connection, the Panel notes that the fish species concerned are of major economic importance for Iran.

165. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

166. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex XII to this report.

167. Taking into consideration the suggested modifications and resulting cost adjustments, the Panel has developed what it considers to be a reasonable estimate for the project. The revised estimate amounts to USD 377,900.

168. The Panel, therefore, recommends compensation in the amount of USD 377,900 for this claim.

10. Claim No. 5000386

169. Iran seeks compensation in the amount of USD 826,000 for a study on the use of genetically modified bacteria to combat residual oil pollution that may have resulted from Iraq's invasion and occupation of Kuwait. According to Iran, the study would isolate a number of bacteria from the Persian Gulf, genetically modify them and release them into its marine environment to assist biodegradation of any remaining hydrocarbons and tarballs.

170. There is evidence in the scientific literature that some bacteria are naturally capable of degrading petroleum hydrocarbons. However, the evidence suggests that a more effective way to encourage bacterial biodegradation of oil would be to add nutrients or oxygen to the contaminated area and thus assist naturally occurring bacteria to grow more rapidly, rather than introducing additional bacteria into the environment. The evidence also indicates that bacterial biodegradation of oil is most effective if undertaken soon after an oil spill. Accordingly, the Panel does not consider that the procedure proposed is likely to be effective so long after the oil spill that resulted from Iraq's invasion and occupation of Kuwait.

171. In addition, the Panel has serious reservations about the deliberate release of genetically modified organisms into the environment. It notes that widespread concerns have been expressed that the release of such organisms could pose risks to the environment and to human health. In the absence of reliable scientific knowledge about the threat posed by these organisms, it is not advisable for Iran to undertake such a potentially risky procedure. This is particularly so in view of the low probability that the experiment would have any practical utility.

172. For these reasons, the Panel finds that the proposed study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

173. The Panel, therefore, recommends no compensation for this claim.

11. Claim No. 5000387

174. Iran seeks compensation in the amount of USD 1,035,000 for a study on the use of Persian Gulf algae and cyanobacteria as a tool for bioremediation of marine ecosystems under its jurisdiction that may have been polluted as a result of Iraq's invasion and occupation of Kuwait. According to Iran, the study is intended to help it identify the species of algae and cyanobacteria that would be most effective for removing oil-borne heavy metals from the environment. The organisms so identified would be introduced into the polluted areas in Iran's marine environment to assist bioremediation of the oil-borne heavy metals in those areas.

175. There is evidence in the scientific literature that some algae and cyanobacteria are capable of absorbing metals into their cells. However, available evidence suggests that photosynthetic organisms do not have any significant ability to degrade petroleum hydrocarbons. There is, therefore, no scientific basis for assuming that algae and cyanobacteria can play an effective role in the bioremediation of environment polluted by oil.

176. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

177. The Panel, therefore, recommends no compensation for this claim.

12. Claim No. 5000382

178. Iran seeks compensation in the amount of USD 3,686,520 for a project to develop a "regional flow and contaminant transport model" for its marine area that may have been affected by the oil spill resulting from Iraq's invasion and occupation of Kuwait. The purpose of the project would be to help establish the extent of pollution of the Iranian coastal areas. Iran has stated that Kuwait would participate in the project and that the two states would work jointly with the Regional Organization for the Protection of the Marine Environment ("ROPME").

179. The project would consist of a modelling component and fieldwork to collect data. The modelling component would involve the development of a three-dimensional hydrodynamic model and an oil transport model for the Persian Gulf. The field effort would be designed to gather information needed to develop, calibrate and validate the model. According to Iran, the project would be used to develop a tool to determine with reasonable accuracy the areas of its marine environment exposed to oil spilled as a result of Iraq's invasion and occupation of Kuwait.

180. As previously noted, Iran's marine environment was exposed to the oil spill that resulted from Iraq's invasion and occupation of Kuwait. A three-

dimensional hydrodynamic model, when used with an oil transport model, can provide information about the fate and location of spilled oil. Such information can be used with available field data to develop a comprehensive historical picture of the spatial extent of pollution, as well as provide guidance for subsequent field investigations and remediation efforts.

181. The Panel finds that the project is an appropriate attempt to assess the extent of pollution that may have been caused by the oil spill. Consequently, it constitutes reasonable monitoring and assessment and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

182. However, the Panel does not consider it necessary for Iran to develop a separate oil transport model. Excellent models capable of performing the analysis intended are available for use by Iran. In the view of the Panel, a competent modelling analysis, building upon existing models, could provide useful guidance on the extent to which Iran's marine environment was exposed to pollution from the oil spill.

183. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex XIII to this report.

184. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The cost of labour has been decreased to take account of the reduction in the work to be undertaken;

(b) The costs of computer hardware and software have been reduced to reflect current prices;

(c) The cost of field data collection has been reduced; and

(d) All costs relating to the participation of Kuwait and ROPME have been eliminated because of uncertainty concerning the arrangement for the participation and the expenses involved.

These adjustments reduce the estimated cost to USD 953,220.

185. The Panel, therefore, recommends compensation in the amount of USD 953,220 for this claim.

186. As previously noted, the Panel emphasizes that savings and scientific benefits can be achieved by co-ordination of monitoring and assessment activities relating to the same subject matter.

13. Claim No. 5000388

187. Iran seeks compensation in the amount of USD 178,400 for a completed study to determine the presence on its shoreline of tarball residues and the extent of oil penetration in its coastal areas that may have resulted from Iraq's invasion and occupation of Kuwait. The study was carried out by the Iranian Department of the Environment between 1995 and 1996. The purpose of the study was to measure the oil pollution concentration along the coastal areas, to map the distribution of oil in the coastal areas, and to provide data for use in evaluation of technologies that could be used for the clean-up of polluted areas.

188. In the opinion of the Panel the study was an appropriate attempt to evaluate the impacts of the oil spill. Thus it constituted reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

189. A report and a one-page budget were submitted by Iran. No other appropriate evidence was submitted. Iran was requested to produce further support to demonstrate the circumstances and amount of the claimed expenditures, but failed to do so.

190. The Panel finds that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

191. The Panel, therefore, recommends no compensation for this claim.

14. Claim No. 5000389

192. Iran seeks compensation in the amount of USD 842,500 for a project to assess the extent to which Iranian coastal areas have recovered from pollution resulting from Iraq's invasion and occupation of Kuwait; and to determine methodologies for the clean-up of areas which have not recovered. According to Iran, the extent of recovery would be assessed by aerial and land surveys along the shoreline. Appropriate clean-up technologies would be selected. These would be tested on small-scale experimental sites.

193. The survey methodology proposed by Iran is consistent with standard practices in the field, and would enable Iran to locate surface oil and collect valuable data. In the Panel's view, Iran's attempt to determine the most cost-effective remedial techniques under different conditions is appropriate.

194. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

195. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex XIV to this report.

196. Upon a review of the cost estimates presented, the Panel finds that the amount claimed is reasonable.

197. The Panel recommends compensation in the amount of USD 842,500 for this claim.

198. The Panel notes that several Claimants are undertaking similar projects (paras. 419-425, 426-433, 592-599 and 606-616). The Panel emphasizes that co-ordination of efforts and sharing of information would be beneficial.

15. Claim No. 5000383

199. Iran seeks compensation in the amount of USD 375,700 for a project to monitor the amount, fate, and effects of petroleum and "black rain" pollutants that may have affected the root-zone soils of the Shadegan Wetland as a result of Iraq's invasion and occupation of Kuwait. According to Iran, the project would also undertake a cost-benefit analysis of the clean-up methodologies that may be required for the preservation of this wildlife habitat.

200. As previously noted (para. 146), the Shadegan Wetland was exposed to oil pollution as a result of Iraq's invasion and occupation of Kuwait. It is possible that this pollution affected the plant communities in the wetland. It is, therefore, appropriate for Iran to attempt to identify and evaluate possible adverse impacts on the wetland. In the Panel's view, the methods proposed by Iran are consistent with standard practices in this field.

201. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

202. Following a review of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex XV to this report.

203. Upon a review of the cost estimates presented, the Panel finds that the costs claimed are reasonable.

204. The Panel recommends compensation in the amount of USD 375,700 for this claim.

16. Claim No. 5000384

205. Iran seeks compensation in the amount of USD 412,000 for a study on the use of aquatic fungi for biodegradation of oil in its wetland and coastal regions that may have been polluted as a result of Iraq's invasion and

occupation of Kuwait. According to Iran, the purpose of the study would be to identify species of local fungi and mixed fungal cultures that are most effective for biodegrading crude oil from Kuwait. The fungi identified would be used for bioremediation of polluted areas in the wetlands.

206. Although there is evidence in the scientific literature that fungi can play an important role in the biodegradation of petroleum hydrocarbons in terrestrial environments, the literature shows that the contribution of fungi to petroleum degradation in marine ecosystems is virtually zero. Accordingly, the Panel does not consider that the procedure proposed is likely to be effective.

207. For this reason, the Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

208. Accordingly, no compensation is recommended for this claim.

17. Claim No. 5000385

209. Iran seeks compensation in the amount of USD 865,400 for a study to quantify the nature and extent of potential injury to coastal marine life in the southwestern part of Iran. According to Iran, the biodiversity and population dynamics of these marine areas were affected by pollutants resulting from Iraq's invasion and occupation of Kuwait. Iran proposes to investigate the biological and genotoxic effects of pollutants on various finfish and shellfish indicator species.

210. In the opinion of the Panel, the objectives of the study would duplicate those of claim Nos. 5000346 and 5000348 (paras. 156-162 and 163-168, respectively). Moreover, claim Nos. 5000346 and 5000348 rely on methodologies that would be more suitable to distinguish the impacts of oil pollution resulting from Iraq's invasion and occupation of Kuwait from damage due to other causes.

211. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

212. The Panel, therefore, recommends no compensation for this claim.

F. Impacts on the terrestrial environment

1. Claim No. 5000424

213. Iran seeks compensation in the amount of USD 703,870 for a study to investigate the impact of oil pollution from the oil fires in Kuwait on soil fertility and crop yield in the southern and southeastern provinces of Iran. Iran proposes, inter alia, to measure the levels of mineralizable carbon and

nitrogen that may have been introduced into the soil through soot and black rain resulting from the oil fires.

214. As previously noted, some airborne pollutants from the oil fires reached parts of the territory of Iran. However, the scientific evidence indicates that soil carbon and nitrogen levels are highly variable and that increases in these levels, especially in agricultural soil, may be due to a variety of factors.

215. In the opinion of the Panel, it is unlikely that the study would enable Iran to determine the extent to which pollution from the oil fires contributed to the levels of carbon that may be observed in the soil. Moreover, the objectives of the study appear to duplicate those of claim No. 5000425, paras. 218-222.

216. The Panel, therefore, finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

217. Accordingly, the Panel recommends no compensation for this claim.

2. Claim No. 5000425

218. Iran seeks compensation in the amount of USD 431,000 for a project to determine the level of soil contamination in Iran that may have been caused by deposition of heavy metals and hydrocarbons from black rain and soot as a result of the oil fires in Kuwait.

219. As previously noted, some airborne pollutants from the oil fires reached parts of the territory of Iran. In the opinion of the Panel, the project is an appropriate attempt by Iran to determine whether any of the pollutants contaminated the soil in its territory.

220. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

221. Following a review of the cost estimates presented by Iran, the Panel finds that the amount claimed is reasonable. The Panel, therefore, recommends compensation in the amount of USD 431,000 for this claim.

222. The Panel emphasizes the need for Iran to take appropriate steps to co-ordinate data collection and analysis in all of its projects that involve sampling of soils.

3. Claim No. 5000420

223. Iran seeks compensation in the amount of USD 980,409 for a completed study to assess the short-term effects of the oil fires in Kuwait on natural

vegetation cover in Iran, with particular reference to changes in green biomass. The study was completed in 1998.

224. As previously noted, some airborne pollutants from the oil fires reached parts of Iran. It was, therefore, appropriate for Iran to attempt to determine the effects that these pollutants might have had on vegetation and biomass in its territory.

225. The Panel finds that the study constituted reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

226. Iran presented documentary evidence in support of costs for the purchase of remote sensing images (including 329 photographic enlargements and associated negatives, and Landsat TM and SPOT images) as well as the costs for support and advisory services provided by the International Institute for Aerospace Survey and Earth Sciences. These expenses amount to USD 758,792. The Panel finds that this amount is reasonable.

227. However, Iran presented no documentary or other appropriate evidence in support of the remaining expenses claimed. Iran was requested to produce supporting documentation for the claim, but the information provided was insufficient to demonstrate the circumstances and amount of the claimed expenditures. For these expenses, the Panel finds that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46. The Panel, therefore, recommends no compensation for these expenses.

228. Accordingly, the Panel recommends compensation in the amount of USD 758,792 for this claim.

229. The date of loss for this claim (for the purpose explained in para. 777) is 3 November 1995.

4. Claim No. 5000421

230. Iran seeks compensation in the amount of USD 871,930 for seven completed studies to determine the scope of damage that might have been caused to environmental resources in Iran as a result of Iraq's invasion and occupation of Kuwait. The objectives of the studies were to identify polluted areas and sources of pollution, and to determine the economic value of the loss resulting from the damage.

231. In the opinion of the Panel, these objectives were appropriate. The Panel, therefore, finds that the studies constituted reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

232. Iran provided little evidence in support of the costs claimed for the studies. Iran was requested to produce additional evidence, but the

information provided was insufficient to demonstrate the circumstances and amount of the claimed expenditures. Consequently, the Panel finds that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

233. Accordingly, the Panel recommends no compensation for this claim.

5. Claim No. 5000422

234. Iran seeks compensation in the amount of USD 632,000 for a study to determine the best and most cost-effective method to rehabilitate areas in the southern parts of Iran that may have been polluted as a result of the oil fires in Kuwait. According to Iran, the study would evaluate and compare three restoration methods, namely, land imprinting, direct seeding and transplantation.

235. In the Panel's opinion, this study is unlikely to produce any information that is not already available in the scientific literature. The restoration techniques to be evaluated have all been well studied in other arid and semi-arid regions around the world, and the conditions under which each technique is likely to be most effective have been discussed in detail.

236. The Panel, therefore, finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

237. Accordingly, the Panel recommends no compensation for this claim.

6. Claim No. 5000426

238. Iran seeks compensation in the amount of USD 1,037,000 for a study to assess the most effective method of restoring its forest areas in Khuzestan, Bushehr, Hormozgan, Ilam, and Fars that may have been damaged by pollution resulting from the oil fires in Kuwait. Iran proposes to introduce fast-growing non-native tree species in affected areas in order to evaluate and compare their ability to survive and thrive.

239. In the opinion of the Panel, the study is unlikely to produce results that are significantly different from those already available. Revegetation has been well studied in other arid and semi-arid regions around the world, including the Middle East, and the scientific literature contains extensive information on the specific complexities of different approaches, and the advantages and disadvantages of using various species.

240. In addition, the Panel has concerns about the proposal to introduce non-native tree species into the environment. The uncontrolled release of non-native species into new environments should generally be undertaken with great caution, especially in environments with fragile ecosystems.

241. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

242. Accordingly, the Panel recommends no compensation for this claim.

7. Claim No. 5000427

243. Iran seeks compensation in the amount of USD 1,489,100 for a project to investigate the impacts that the pollution from the oil fires in Kuwait may have had on forests in the southern and southwestern areas of Iran. According to Iran, the project consists of two phases, the first of which was completed in 1998.

244. As previously noted, there is evidence that petroleum-related pollutants can have adverse impacts on various plant species. It is, therefore, reasonable for Iran to attempt to evaluate these impacts in regions of its territory that may have been affected by such pollutants.

245. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

246. A report and a one-page budget were presented by Iran to support the first phase of the project. No evidence was presented in support of the expenses alleged to have been incurred. Although Iran was requested to produce additional, appropriate evidence, such as contracts, invoices, receipts, salary vouchers and/or accounting records, it failed to do so.

247. In view of these evidentiary shortcomings, the Panel does not recommend any compensation for the first phase of the project. Elimination of those expenses reduces the amount claimed to USD 663,600.

248. Following a review of the second phase of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex XVI to this report.

249. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The costs of labour have been reduced to reflect a decrease in the amount of labour required;

(b) The cost of material for DNA analysis has been eliminated;

(c) Savings from eliminated DNA-related labour costs are assumed to become available for the recommended additional enzyme analyses; and

(d) Additional provision has been made for a dendrochronograph to be used for a temporal analysis of tree ring growth.

These adjustments reduce the estimated costs for the second phase of the project to USD 624,600.

250. Accordingly, the Panel recommends compensation in the amount of USD 624,600 for this claim.

251. The Panel emphasizes the need for Iran to take appropriate steps to co-ordinate data collection and analysis in all of its projects that involve sampling of soils.

8. Claim No. 5000428

252. Iran seeks compensation in the amount of USD 2,054,600 for a three-phase monitoring and assessment project to investigate the long-term effects of pollutants from the oil fires in Kuwait on livestock in Iran's territory. According to Iran, the project would enable it to identify trends in the incidence of diseases among the livestock.

253. The first phase of the project would involve the collection and processing of statistical data on the incidence of health disorders among livestock and poultry from eight provinces of the country. In the second phase Iran would attempt to determine the bioaccumulation rate of oil-related pollutants in the organs of livestock and poultry. The third phase would identify possible correlations between pollutants from the oil fires and adverse health effects that might be observed in livestock. Where possible, suitable preventive or remedial measures would be selected.

254. Iraq argues that diseases in livestock are caused by bacteria, viruses, parasites and other micro-organisms, but not by smoke.

255. As previously noted, some airborne pollutants from the oil fires reached parts of the territory of Iran. Some of the pollutants could have had adverse health effects on livestock. It is therefore appropriate for Iran to attempt to evaluate these impacts in the regions of its territory that may have been affected by such pollutants.

256. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

257. However, the Panel notes that ten years have elapsed since Iraq's invasion and occupation of Kuwait. Given the typical lifespan of livestock species in Iran, most of the livestock currently in the country are unlikely to have been present during the invasion and occupation of Kuwait. The Panel therefore finds that an attempt to study impacts on livestock by widespread sampling of bioaccumulation levels in organs of livestock alive today is not appropriate. Accordingly, the Panel finds that the second phase of the project does not constitute reasonable monitoring and

assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

258. Following a review of the first and third phases of the project as presented by Iran, the Panel suggests certain modifications, details of which are set out in annex XVII to this report.

259. The Panel has made adjustments to the labour costs in the first and third phases of the project to reflect changes in the scope of the project. In addition, the Panel has made adjustments to take into account the elimination of the second phase of the project. These adjustments reduce the estimated cost to USD 1,679,091.

260. The Panel, therefore, recommends compensation in the amount of USD 1,679,091 for this claim.

G. Departure of persons from Iraq or Kuwait

Claim No. 5000423

261. Iran seeks compensation in the amount of USD 678,100 for a study to investigate the nature and extent of damage that may have been caused to the Zagros Mountain range by refugees who camped there with their livestock, and to determine the likely persistence of any such damage. Iran alleges that the majority of the refugees were Kurds who fled from Iraq as a result of Iraq's invasion and occupation of Kuwait.

262. The Panel notes that, pursuant to paragraph 34(b) of Governing Council decision 7, losses resulting from the departure of persons from Iraq or Kuwait are compensable if the departures occurred within the period 2 August 1990 to 2 March 1991.

263. Iran did not provide adequate documentation to establish that the refugees departed Iraq or Kuwait during the period 2 August 1990 to 2 March 1991. The Panel is thus unable to determine if any of the refugees departed from Iraq during the period specified in Governing Council decision 7 and, consequently, whether damage resulting from their presence in Iran would qualify as direct loss.

264. Accordingly, the Panel finds that Iran has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

265. The Panel, therefore, recommends no compensation for this claim.

H. Public health impacts

1. Claim No. 5000390

266. Iran seeks compensation in the amount of USD 899,000 for a study to investigate the effects that airborne pollutants from the oil fires in Kuwait may have had on the mitochondrial respiratory condition of inhabitants of the western provinces of Iran. Iran proposes to measure mitochondrial respiratory chain enzyme activity in the platelets of non-smokers in the western provinces of Iran who are known to have been affected by pollutants from the oil fires, and compare the results with those found in the platelets of non-smoking relatives in unaffected areas.

267. The stated rationale for the study is that airborne pollutants can cause mitochondrial dysfunction and neuronal toxicity in exposed populations.

268. In its written response, Iraq argues that Iran lacks adequate baseline data against which to compare the health effects allegedly caused by exposure to pollutants from the oil fires. Iraq also questions the feasibility of detecting any adverse health effects so long after the alleged exposure.

269. In the Panel's view, there is no justification for a study that purports to detect effects of smoke inhalation on mitochondrial function by examining platelets nine to ten years after exposure to the smoke. Even if measurable effects on mitochondrial function could have been detected in platelets among a few highly exposed persons during the period of the oil fires, it is highly unlikely that such effects would still be measurable in circulating platelets of such persons after such a long lapse of time.

270. The Panel, therefore, finds that the proposed study does not constitute reasonable monitoring of public health for the purposes of paragraph 35(d) of Governing Council decision 7.

271. Accordingly, the Panel recommends no compensation for this claim.

2. Claim No. 5000391

272. Iran seeks compensation in the amount of USD 1,468,819 for a project to investigate the effects that airborne pollutants from the oil fires in Kuwait may have had on the pulmonary health of inhabitants of Iran. According to Iran, the project would be carried out by experts from the University of California/Los Angeles and the City University of New York. The purpose is to assess the impacts of the pollutants on the health of exposed populations, based on the level and duration of exposure. It would also attempt to identify, through the use of model exposure data, diseases that may arise in exposed populations in the future.

273. In the opinion of the Panel, the objectives of the study would duplicate those of claim Nos. 5000393 and 5000395 (paras. 283-287 and 291-296, respectively).

274. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

275. The Panel, therefore, recommends no compensation for this claim.

3. Claim No. 5000392

276. Iran seeks compensation in the amount of USD 1,926,220 for a project to investigate the psychiatric effects on the Iranian population that may have resulted from trauma experienced during Iraq's invasion and occupation of Kuwait, and to estimate the cost of treating any such psychiatric disorders. According to Iran, the project would use the Composite International Diagnostic Interview IV method to compare levels of psychiatric symptoms and rates of psychiatric disorder in the following three sections of its population:

(a) Persons who were exposed to both the war between Iran and Iraq of 1980-1988 and the oil fires in Kuwait;

(b) Persons who were exposed only to the oil fires; and

(c) Persons who were not exposed to either of the above two conditions.

277. Iraq argues that the proposed project has several flaws. First, it states that "retrospective studies are meaningless unless backed with [a] reliable database". Second, it states that no database is available, and that no sampling was carried out at the time. Third, Iraq states that the number of inhabitants covered by the study is not mentioned.

278. The evidence in the scientific literature indicates that psychiatric disorders, such as post-traumatic stress disorder ("PTSD") and associated co-morbid psychiatric disorders, may result from events such as those that occurred during Iraq's invasion and occupation of Kuwait. These disorders can persist for long periods after the events that led to the trauma. It is also possible that Iraq's invasion and occupation of Kuwait triggered in some persons a recurrence of PTSD or associated disorder that they had previously suffered as a result of the war between Iran and Iraq.

279. In the view of the Panel, it is appropriate for Iran to attempt to investigate psychiatric disorders that may have been suffered by its inhabitants as a result of Iraq's invasion and occupation of Kuwait. Thus the project constitutes reasonable monitoring of public health, and the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

280. The Panel notes that the usefulness of the results of the project will depend on how accurately the investigators are able to determine the regions of the country that were affected by the war between Iran and Iraq or by the oil fires in Kuwait or by both. Accurate determination of such regions would also provide useful information for the analysis of the incidence of disorders and costs of treatment. The Panel also emphasizes that it will be necessary to translate the Composite International Diagnostic Interview IV into Farsi in accordance with World Health Organization protocols to ensure that inferences drawn from the results of the interviews would be valid.

281. Following a review of the cost estimates presented by Iran, the Panel has made adjustments as follows:

(a) The costs of labour have been reduced to reflect a decrease in the overall amount of labour required;

(b) The rates of pay for some categories of personnel have been reduced to reflect standard rates;

(c) The costs for consumables have been reduced to take account of a correction made by Iran; and

(d) The costs for equipment and supplies have been reduced.

These adjustments reduce the estimated cost to USD 1,226,044.

282. The Panel, therefore, recommends compensation in the amount of USD 1,226,044 for this claim.

4. Claim No. 5000393

283. Iran seeks compensation in the amount of USD 449,000 for a project to investigate the possible impacts of airborne pollutants from the oil fires in Kuwait on the respiratory health of young persons in Iran. According to Iran, the project would examine a representative sample of young persons in Iran living within a radius of 400 kilometres from the centre of Kuwait, in order to determine adverse health effects that may have resulted from airborne pollutants released by the oil fires. The project would be conducted by means of questionnaires and medical examinations. The data collected would be compared with data collected from young persons living in non-affected areas.

284. The Panel considers that the project is an appropriate attempt to monitor and assess the respiratory health of young persons living in areas that could have been affected by the oil fires. The project is based on an epidemiological design that is clearly described and reasonable; and the proposed age group, sample size, and health measures are all appropriate. In the view of the Panel, the project could be further refined by including a control sample of unexposed young persons for comparison with the high-

exposure group, using a similar investigation protocol and matching the groups by sex and age.

285. The Panel finds that this project constitutes reasonable monitoring of public health. Consequently, expenses of the project qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

286. Following a review of the cost estimates presented by Iran, the Panel finds that the amount claimed is reasonable.

287. The Panel, therefore, recommends compensation in the amount of USD 449,000 for this claim.

5. Claim No. 5000394

288. Iran seeks compensation in the amount of USD 2,112,500 for a study to investigate possible links between petroleum-based pollutants from the oil fires and oil spill in Kuwait and the incidence of cancers and haematological disorders in the populations of 12 Iranian provinces. Iran proposes to compare the incidence of various haematological disorders and solid malignant neoplasms in the period prior to Iraq's invasion and occupation of Kuwait with the incidence of similar disorders after Iraq's invasion.

289. In the Panel's view, this claim is premature because it is unlikely that significant evidence of increased cancer rates will be found ten years after the release of pollutants from the oil fires and oil spill. For cancers and haematological disorders, especially solid tumour cancers, there is generally a latency period of 15 to 20 years between exposure to a carcinogen and the first clinical evidence of the cancer.

290. The Panel has, therefore, decided to transfer this claim to a later instalment, where it may be reviewed by the Panel with the substantive claims.

6. Claim No. 5000395

291. Iran seeks compensation in the amount of USD 459,000 for a project to investigate the impact of airborne pollutants from the oil fires on the health of the 3,000,000 inhabitants of the Zagros Mountains region of Iran. According to Iran, the project would involve medical examinations, with an emphasis on respiratory functions and cardiovascular diseases, of a randomly selected sample of 3,000 persons of all age groups living in that region within a radius of 200 to 500 kilometres from the oil fires in Kuwait. The medical examinations would be supplemented by questionnaires to be completed by the persons examined. The results would be extrapolated for the entire population of the region and analysed to estimate the scale of damage that may have been caused.

292. In the opinion of the Panel, the project is an appropriate attempt to assess the public health damage that might have resulted from airborne pollutants from the oil fires in Kuwait. The epidemiological design for the project is clearly stated and the target populations, sample sizes, and health measures are appropriate.

293. Thus the project constitutes reasonable monitoring of public health, and the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

294. However, the Panel stresses that the use of residents from an unaffected area as a control group, using the same investigation protocol, is essential for the usefulness of this project.

295. Following a review of the cost estimates presented by Iran, the Panel finds that the amount claimed is reasonable.

296. The Panel, therefore, recommends compensation in the amount of USD 459,000 for this claim.

Table 3. Recommended amounts for Iran's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)	Amount recommended (USD)
5000329	Transport and Dispersion of Pollution	432,983	120,000
5000330	Transport and Dispersion of Pollution	1,984,660	672,960
5000331	Cultural Heritage	43,605	nil
5000446	Cultural Heritage	2,734,600	1,398,100
5000447	Cultural Heritage	2,716,200	575,000
5000341	Cultural Heritage	783,300	nil
5000342	Cultural Heritage	472,800	nil
5000343	Groundwater and Surface Water	785,000	371,656
5000347	Marine and Coastal	822,400	711,200
5000349	Marine and Coastal	363,537	263,037
5000350	Marine and Coastal	822,500	661,140
5000351	Marine and Coastal	454,500	157,776
5000352	Marine and Coastal	488,630	357,730
5000344	Marine and Coastal	686,100	489,750
5000345	Marine and Coastal	143,600	143,600
5000346	Marine and Coastal	4,208,900	2,908,274
5000348	Marine and Coastal	594,000	377,900
5000386	Marine and Coastal	826,000	nil
5000387	Marine and Coastal	1,035,000	nil
5000382	Marine and Coastal	3,686,520	953,220
5000388	Marine and Coastal	178,400	nil
5000389	Marine and Coastal	842,500	842,500
5000383	Marine and Coastal	375,700	375,700
5000384	Marine and Coastal	412,000	nil
5000385	Marine and Coastal	865,400	nil
5000424	Terrestrial	703,870	nil
5000425	Terrestrial	431,000	431,000
5000420	Terrestrial	980,409	758,792
5000421	Terrestrial	871,930	nil
5000422	Terrestrial	632,000	nil
5000426	Terrestrial	1,037,000	nil
5000427	Terrestrial	1,489,100	624,600
5000428	Terrestrial	2,054,600	1,679,091
5000423	Departure of persons from Iraq or Kuwait	678,100	nil
5000390	Public Health	899,000	nil
5000391	Public Health	1,468,819	nil
5000392	Public Health	1,926,220	1,226,044
5000393	Public Health	449,000	449,000
5000394	Public Health	2,112,500	Transferred
5000395	Public Health	459,000	459,000
Total		42,951,383	17,007,070

VI. MONITORING AND ASSESSMENT CLAIMS OF THE HASHEMITE KINGDOM OF JORDAN

Table 4. Jordan's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)
5000353	Departure of persons from Iraq or Kuwait	1,730,000
5000354	Departure of persons from Iraq or Kuwait	1,767,042
5000355	Departure of persons from Iraq or Kuwait	295,612
5000356	Departure of persons from Iraq or Kuwait	473,192
5000357	Departure of persons from Iraq or Kuwait	602,232
5000358	Departure of persons from Iraq or Kuwait	1,345,830
5000396	Departure of persons from Iraq or Kuwait	1,993,675
5000429	Departure of persons from Iraq or Kuwait	1,735,000
5000430	Departure of persons from Iraq or Kuwait	750,000
5000431	Departure of persons from Iraq or Kuwait	1,796,366
Total		12,488,949

A. Overview

297. The claims of Jordan relate to losses alleged to have been suffered because of the influx of refugees and involuntary immigrants from Iraq and Kuwait as a result of Iraq's invasion and occupation of Kuwait. For the purposes of its monitoring and assessment claims, Jordan defines "refugees" as "all those people, of whatever nationality, who entered Jordan from Iraq and Kuwait as a direct result of Iraq's invasion and occupation of Kuwait, between 2 August 1990 and 1 September 1991", having left Iraq or Kuwait on or before 2 March 1991. Jordan defines "involuntary immigrants" as people who were "refugees" initially, but who were still resident in Jordan after 1 September 1991. Jordan states that large numbers of refugees entered its territory from Kuwait and Iraq as a result of Iraq's invasion and occupation of Kuwait, and that their presence resulted in considerable damage, including damage to water resources, coastal areas and the terrestrial environment.

298. In particular, Jordan alleges that groundwater extraction rates were increased in order to supply water to refugees and involuntary immigrants. This resulted in over-extraction, saline intrusion into the aquifers and, eventually, degradation of water resources and water supply infrastructure, including pumping stations and piping. It also claims that wastes from refugee camps and settlements for involuntary immigrants polluted the water supply.

299. In addition, Jordan claims that the presence of refugees and involuntary immigrants caused damage to its coastal marine environment around the port city of Aqaba, which was used as a transit point for the refugees and involuntary immigrants.

300. Jordan states that the movement and activities of refugees and involuntary immigrants, the deployment of Jordanian army personnel and equipment to defend Jordan's border with Iraq and to assist in relief operations in connection with the refugees, and the presence of large numbers of nomads and their herds caused damage to the ecosystems of its eastern desert.

301. Finally, Jordan alleges that the increased demand for water by refugees and involuntary immigrants led to a decrease in the quantity and quality of irrigation water, resulting in damage to agricultural resources in the Jordan Valley.

302. In its written comments on Jordan's monitoring and assessment claims, Iraq argues that the environmental damage caused by the transit of refugees through Jordan was not a direct result of Iraq's invasion and occupation of Kuwait. Iraq also contends that the damage alleged to have been suffered by ecosystems and natural resources of Jordan had other causes and, in any case, has been greatly exaggerated.

303. Iraq reiterated these contentions during the oral proceedings.

304. The Panel notes that, pursuant to paragraph 34 of Governing Council decision 7, a loss incurred as a result of departures of persons from Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait constitutes direct loss, damage or injury resulting from Iraq's invasion. The decision whether any particular loss resulted from departures within the meaning of the Governing Council decision will depend on the evidence produced in each case.

B. Departure of persons from Iraq or Kuwait

1. Claim No. 5000353

305. Jordan seeks compensation in the amount of USD 1,730,000 for a project to investigate and establish the temporal and spatial distribution of refugees and involuntary immigrants who entered Jordan between 2 August 1990 and 2 March 1991 as a result of Iraq's invasion and occupation of Kuwait. According to Jordan, the project is an essential component of its efforts to assess and quantify the environmental damage that it may have suffered as a result of the presence of refugees and involuntary immigrants in its territory, and to determine appropriate measures to abate and remediate any such damage.

306. Paragraph 34 of Governing Council decision 7 states that "direct loss, damage or injury" resulting from Iraq's invasion and occupation of Kuwait includes any loss suffered as a result of "[d]eparture of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during [the] period [of 2 August 1990 to 2 March 1991]". To ensure a full assessment of damage and losses that may have resulted from the influx of

refugees and involuntary immigrants into Jordan, the Panel considers it appropriate to take into account information relating to reasonable periods before 2 August 1990 and after 2 March 1991. In this regard, the Panel notes that other panels of Commissioners have found that some expenses incurred subsequent to 2 March 1991 in connection with the departure of persons from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 may be compensable as direct losses resulting from Iraq's invasion and occupation of Kuwait. (See, e.g. S/AC.26/1999/23; S/AC.26/1999/24, para. 190.)

307. In the Panel's view, some environmental damage could have resulted from the population influx into Jordan caused by the departure of persons from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991, and it is therefore appropriate for Jordan to attempt to identify damage attributable to the influx.

308. The Panel, therefore, finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

309. Following a review of the cost estimates presented by Jordan, the Panel has made adjustments as follows:

(a) The cost of travel for witnesses to appear before the Commission has been eliminated because no such witnesses are required;

(b) The cost of the services of an environmental lawyer has been eliminated because such services are not necessary;

(c) The cost of labour has been reduced to the level considered reasonable for the project; and

(d) The costs of "non-expendable" equipment have been reduced to take account of its residual value.

These adjustments reduce the estimated cost to USD 1,144,000.

310. The Panel, therefore, recommends compensation in the amount of USD 1,144,000 for this claim.

2. Claim No. 5000354

311. Jordan seeks compensation in the amount of USD 1,767,042 for a project to assess degradation in quality, and reduction in quantity, of water resources in Jordan that may have resulted from the presence of refugees and involuntary immigrants who departed from Iraq or Kuwait as a result of Iraq's invasion and occupation of Kuwait. According to Jordan, the project would also help to investigate methods for the remediation or restoration of damaged water resources.

312. Jordan alleges that the extraction of groundwater was increased in order to supply refugees and involuntary immigrants, and that this over-extraction led to saline intrusion into the aquifers with consequent degradation of water quality.

313. In the view of the Panel, the project is an appropriate attempt to identify damage to Jordan's water resources that may have resulted from the presence of persons who departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991. The project may also provide useful information for selecting suitable remediation measures.

314. The Panel, therefore, finds that the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

315. Following a review of the cost estimates presented by Jordan, the Panel has adjusted the cost of labour by decreasing the number of hours of work and applying standard hourly rates. These adjustments reduce the estimated cost to USD 1,020,116.

316. The Panel, therefore, recommends compensation in the amount of USD 1,020,116 for this claim.

3. Claim No. 5000355

317. Jordan seeks compensation in the amount of USD 295,612 for a project to assess groundwater pollution downgradient of the As-Samra Wastewater Treatment Plant in Jordan that may have resulted from the presence of refugees and involuntary immigrants who entered Jordan as a result of Iraq's invasion and occupation of Kuwait. The project would also investigate methods to abate pollution that may be identified.

318. According to Jordan, the additional wastewater generated from refugee camps and settlements for involuntary immigrants increased the seepage of wastewater from treatment plant settling ponds, resulting in groundwater contamination.

319. The Panel finds that the project is an appropriate attempt to evaluate damage to water resources that may have resulted from the presence of persons who departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 in Jordan. Thus it constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

320. Following a review of the cost estimates presented by Jordan, the Panel has reduced the cost of labour by adjusting the amount of work to be undertaken and by applying standard hourly rates. These adjustments reduce the estimated cost to USD 224,361.

321. The Panel, therefore, recommends compensation in the amount of USD 224,361 for this claim.

4. Claim No. 5000356

322. Jordan seeks compensation in the amount of USD 473,192 for a project to determine the extent of bacterial contamination of freshwater springs in Jordan's four major water extraction areas (As-Salt, Rusifha, Jarash and Wadi-As-Sir) that may have resulted from disposal of human waste generated by refugees and involuntary immigrants who entered Jordan as a result of Iraq's invasion and occupation of Kuwait.

323. According to Jordan, the project would assess population increases near the springs, the duration of the presence of refugees and involuntary immigrants, their waste disposal practices, and possible pathways by which wastes from the camps and settlements could have reached the springs. The project would also assess and compare various treatment, remediation and restoration options.

324. In the Panel's opinion, it is appropriate for Jordan to attempt to assess the extent of damage that may have been caused. The Panel finds, therefore, that the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

325. Following a review of the cost estimates presented by Jordan, the Panel has adjusted the cost of labour by decreasing the number of hours of work and applying standard hourly rates. These adjustments reduce the estimated cost to USD 210,874.

326. The Panel, therefore, recommends compensation in the amount of USD 210,874 for this claim.

5. Claim No. 5000357

327. Jordan seeks compensation in the amount of USD 602,232 for a project to assess degradation in quality, and reduction in quantity, of water resources in Jordan that may have resulted from the use of unlined cesspits at camps for refugees and settlements for involuntary immigrants who entered Jordan as a result of Iraq's invasion and occupation of Kuwait. According to Jordan, the project would also select methods to abate any harm and restore damaged water resources.

328. The Panel finds that the project is an appropriate attempt to assess damage to water resources that may have resulted from the presence in Jordan of persons who departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991. Thus the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with

329. Following a review of the cost estimates presented by Jordan, the Panel has made adjustments as follows:

(a) The total amount of labour has been adjusted;

(b) The hourly rates of labour have been reduced by applying standard rates; and

(c) The cost of groundwater monitoring well installation has been reduced to take account of lower well installation costs in five areas where the water table is at a shallow depth.

These adjustments reduce the estimated cost to USD 429,799.

330. The Panel, therefore, recommends compensation in the amount of USD 429,799 for this claim.

6. Claim No. 5000358

331. Jordan seeks compensation in the amount of USD 1,345,830 for a project to quantify, in monetary terms, the damage to its water resources and related infrastructure that may have resulted from the presence in Jordan of refugees and involuntary immigrants as a result of Iraq's invasion and occupation of Kuwait.

332. Jordan proposes to develop and calibrate a computer model to assess loss or damage from degradation in water quality. The model would be used, in conjunction with other data, to evaluate the loss of supply, the increased cost of supply and the damage to infrastructure.

333. In the Panel's opinion, increases in waste disposal and water consumption by persons who departed from Iraq or Kuwait during the period 2 August 1990 to 2 March 1991 could have resulted in degradation of Jordan's water resources and related infrastructure. The project is, therefore, an appropriate attempt to assess the value of damage to water resources and infrastructure.

334. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

335. Following a review of the cost estimates presented by Jordan, the Panel has suggested a modification and made adjustments as follows:

(a) The estimated costs for data recording have been eliminated because technicians can record the necessary data;

(b) The total amount of labour has been adjusted;

(c) The hourly labour rates have been reduced by applying standard

(d) Survey expenses have been eliminated because Jordan has provided no explanation for these expenses.

These adjustments reduce the estimated cost to USD 515,392.

336. The Panel, therefore, recommends compensation in the amount of USD 515,392 for this claim.

7. Claim No. 5000396

337. Jordan seeks compensation in the amount of USD 1,993,675 for a project to assess and quantify damage to its coastal marine environment that may have been caused by the presence of refugees and involuntary immigrants in and around the port city of Aqaba as a result of Iraq's invasion and occupation of Kuwait.

338. Jordan proposes to assess damage and identify its causes by examining the current environmental conditions in areas potentially affected by refugee camps and settlements for involuntary immigrants. Data would be collected on, inter alia, the number of refugees that were in the camps, anchorage areas for ships and boats, and the departure routes used by the refugees. The data would be used to identify damaged marine areas, establish the degree of degradation and determine any necessary remediation or restoration measures. The project would also use "Habitat Equivalency Analysis", a methodology for scaling restoration alternatives to reflect the magnitude and temporal extent of resource injuries, to quantify, in monetary terms, the loss of ecosystem services.

339. In the Panel's view, it is appropriate for Jordan to attempt to assess these environmental impacts and examine restoration options, and the methods proposed are internationally recognized.

340. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

341. On review of the claim, the Panel has made adjustments to the cost estimates presented by Jordan as follows:

(a) The amount of labour for non-technical support personnel has been reduced; and

(b) The hourly labour rates have been reduced by applying standard rates.

These adjustments reduce the estimated cost to USD 1,016,435.

342. The Panel, therefore, recommends compensation in the amount of USD 1,016,435 for this claim.

8. Claim No. 5000429

343. Jordan seeks compensation in the amount of USD 1,735,000 for a project to assess and quantify damage that may have been caused to the ecosystems of its eastern desert (Badia) by the movement and activities of refugees and involuntary immigrants fleeing Iraq and Kuwait as a result of Iraq's invasion and occupation of Kuwait; by the deployment of Jordanian army personnel and equipment; and as a result of the presence of large numbers of nomads and their herds in the Jordanian Badia.

344. According to Jordan, the project would have seven components. The first is the analysis of the numbers and movement patterns of refugees and involuntary immigrants. The second is the quantification of the total area disturbed by military operations and assessment of the current state of these allegedly disturbed environments. The third component is the estimation of the number of sheep and goats that crossed the Iraqi border into Jordan, and the definition of their spatial and temporal distribution. The fourth component is aimed at obtaining region-specific information on average damage caused per animal for the purposes of determining the magnitude of livestock impact on the environment. The fifth is the establishment of baseline conditions through the characterization of ecological conditions of affected areas, both before and after Iraq's invasion and occupation of Kuwait. The sixth component is aimed at determining whether there has been an increase in the incidence of livestock disease in wildlife, and at quantifying the changes in the disease transfer rate. The last component is the quantification of damage to the desert ecosystems, the identification of restoration options, and the use of "Habitat Equivalency Analysis" to quantify, in monetary terms, the loss of ecosystem services.

345. Iraq, in its written response, notes that the sixth component of this claim assumes that goat and sheep disease transfer occurred, but that no such cases have been reported. Moreover, Iraq states that other livestock border crossings, such as smuggling, may have occurred after 1991, which would also provide a pathway for disease transfer.

346. In the Panel's view, it is appropriate for Jordan to attempt to assess environmental impacts on its desert ecosystems. However, expenses to determine the areas affected by operations of Jordanian military personnel and equipment are not eligible for compensation because, pursuant to paragraph 34(a) of Governing Council decision 7, damage caused by military activities is only compensable if it results from "military operations or threat of military action by either side". The "E2" Panel found that, "to find a threat of military action by Iraq outside Iraq or Kuwait for the purpose of establishing the Commission's jurisdiction over a claim based on that threat ... a specific threat by Iraq must have been directed at that location ... [and] ... the target of that threat, if any, must have been within the range of Iraq's military reach" (S/AC.26/1996/6, para. 68). The

"F2" Panel noted that "military operations did not take place within the land territory of Jordan. Nor was that land territory the subject of an Iraqi threat of military action, even though it was within the range of Iraqi military reach" (Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "F2" Claims, S/AC.26/1999/23, para. 25). Moreover, Jordan has provided no evidence that its territory was the subject of military action or the threat of military action from Iraq.

347. The Panel finds that the fourth component of the project (developing region-specific information on rates of per-animal damage to the environment) can be incorporated in the data analysis included in the third component of this claim. Similarly, the Panel does not consider the sixth component of the project to be appropriate, because a review of historical data concerning livestock disease in wildlife can be incorporated in the characterization of regional biodiversity in the fifth component of this claim.

348. The Panel finds that the project, with the exception of the second, fourth and sixth components, constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

349. Following a review of the costs presented, the Panel has eliminated expenses relating to the second, fourth and sixth components of the project. Elimination of these expenses reduces the estimated cost to USD 1,060,000.

350. The Panel, therefore, recommends compensation in the amount of USD 1,060,000 for this claim.

9. Claim No. 5000430

351. Jordan seeks compensation in the amount of USD 750,000 for a project to assess and quantify damage to its wetland ecosystems that may have been caused by the decrease in the quantity and quality of water supplying wetlands. Jordan alleges that the increased water demand from refugees and involuntary immigrants resulted in decreased water flow and increased salinity levels. Jordan also alleges that troop deployment may have caused damage to the wetland ecosystems.

352. There are three components of the project. The first is the delineation of the location and extent of the wetlands. The second is the documentation of water quality and quantity alterations. The third is the quantification of the extent of the damage to the wetland ecosystems, the identification of restoration options, and the use of "Habitat Equivalency Analysis" to quantify, in monetary terms, the loss of ecosystem services.

353. The Panel finds that it is appropriate for Jordan to attempt to assess the damage that may have been caused to its wetland ecosystems.

Accordingly, the Panel finds that the claim constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

354. However, the Panel finds that the budget estimate presented by Jordan for the second component of the project exceeds what is needed to conduct a review of the available documentation concerning alterations in water quality and quantity in the wetlands. The Panel has, therefore, made adjustments to the cost estimates for that component. These adjustments reduce the estimated cost to USD 640,000.

355. The Panel, therefore, recommends compensation in the amount of USD 640,000 for this claim.

10. Claim No. 5000431

356. Jordan seeks compensation in the amount of USD 1,796,366 for a project to evaluate damage that may have been caused to agricultural resources in the Jordan Valley by reduction in quantity and quality of irrigation water caused by the influx of refugees and involuntary immigrants into Jordan as a result of Iraq's invasion and occupation of Kuwait.

357. Jordan alleges that the influx into its territory of unanticipated numbers of refugees and involuntary immigrants led to the diversion of irrigation water to satisfy the increased demand for water. Jordan also alleges that accelerated extraction from underground aquifers led to increased salinity in groundwater and irrigation water.

358. The project consists of five components. The first is the quantification of the nature and extent of agricultural damage resulting from the influx of refugees and involuntary immigrants during and after Iraq's invasion and occupation of Kuwait. The second is the building of an irrigation supply network model to determine the effects of effluent from the As-Samra treatment plant on the quantity and quality of irrigation water. The third is the verification of the network model. The fourth component is the evaluation of restoration actions necessary to deal with the increased salinity of the effluent. The final component is the quantification, in monetary terms, of the loss in agricultural productivity from 1991 to the present.

359. The Panel considers that it is appropriate for Jordan to attempt to evaluate the damage to its agricultural resources. However, the Panel finds that the fourth component to evaluate restoration actions duplicates Jordan's other groundwater and surface water monitoring and assessment projects (claim Nos. 5000354, 5000355, 5000356 and 5000357).

360. The Panel finds that the project, with the exception of the fourth component, constitutes reasonable monitoring and assessment. Consequently,

the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

361. Following a review of the cost estimates presented by Jordan, the Panel has made adjustments as follows:

(a) The amount of labour required for the second component of the project has been adjusted; and

(b) The costs of labour have been reduced by applying standard hourly rates.

These adjustments reduce the estimated cost to USD 799,648.

362. The Panel, therefore, recommends compensation in the amount of USD 799,648 for this claim.

Table 5. Recommended amounts for Jordan's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)	Amount recommended (USD)
5000353	Departure of persons from Iraq or Kuwait	1,730,000	1,144,000
5000354	Departure of persons from Iraq or Kuwait	1,767,042	1,020,116
5000355	Departure of persons from Iraq or Kuwait	295,612	224,361
5000356	Departure of persons from Iraq or Kuwait	473,192	210,874
5000357	Departure of persons from Iraq or Kuwait	602,232	429,799
5000358	Departure of persons from Iraq or Kuwait	1,345,830	515,392
5000396	Departure of persons from Iraq or Kuwait	1,993,675	1,016,435
5000429	Departure of persons from Iraq or Kuwait	1,735,000	1,060,000
5000430	Departure of persons from Iraq or Kuwait	750,000	640,000
5000431	Departure of persons from Iraq or Kuwait	1,796,366	799,648
Total		12,488,949	7,060,625

VII. MONITORING AND ASSESSMENT CLAIMS OF THE STATE OF KUWAIT

Table 6. Kuwait's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)
5000373	Groundwater and Surface Water	842,812
5000374	Groundwater and Surface Water	981,635
5000375	Groundwater and Surface Water	830,661
5000376	Groundwater and Surface Water	10,922,933
5000377	Marine and Coastal	612,600
5000378	Marine and Coastal	57,554,587
5000397	Marine and Coastal	76,620,762
5000398	Marine and Coastal	157,249,044
5000399	Marine and Coastal	543,792
5000400	Marine and Coastal	1,985,633
5000401	Marine and Coastal	208,455
5000402	Marine and Coastal	184,125
5000432	Terrestrial	84,575,306
5000433	Terrestrial	160,344
5000434	Terrestrial	38,684,607
5000435	Terrestrial	390,920
5000436	Terrestrial	184,125
5000403	Public Health	6,906,162
5000404	Public Health	1,150,771
5000405	Public Health	4,940,547
5000406	Public Health	14,121,103
5000407	Public Health	770,190
Total		460,421,114

A. Overview

363. Kuwait submitted claims for monitoring and assessment of environmental damage, depletion of natural resources and public health damage that it alleges it suffered as a result of Iraq's invasion and occupation of Kuwait. It states that Iraq's detonation of Kuwait's oil wells during the final days of Iraq's occupation of Kuwait resulted in the release of over one billion barrels of crude oil into the environment. Crude oil was released into the atmosphere primarily in the form of products of incomplete combustion (smoke and oil mist), and returned to the ground as soot and oil droplets. Oil lakes were formed in the desert by oil both from wells that did not ignite and from wells that continued to gush oil after the fires were extinguished.

364. Kuwait estimates that, although approximately 24 million barrels of oil were recovered, 22.6 million cubic metres of oil-contaminated soil, covering approximately 49 square kilometres of the desert surface, still remain, and that this contamination could affect groundwater.

365. According to Kuwait, the desert soils and vegetation were severely disrupted by the construction of antitank ditches, berms, bunkers, trenches, and pits; the emplacement of mines; and the extensive movement of military vehicles. These activities are alleged to have resulted in, inter alia, increased soil erosion; the formation and movement of sand sheets and dunes; long-term deterioration in soil productivity; increased risk of damage to human health from inhalation of polluted air; increased sedimentation in the Persian Gulf; and increased risk of adverse effects on desert ecosystems and biodiversity.

366. Kuwait further alleges that the massive amounts of oil released into the Persian Gulf polluted beaches, intertidal areas, the seabed, coastal waters and fishery resources.

367. Finally, Kuwait claims that an assessment of the health of its population has revealed strong links between current health problems and the results of Iraq's invasion and occupation of Kuwait, including damage to the environment, trauma to the population, and devastation of the country's health support system.

368. Iraq's comments with respect to Kuwait's monitoring and assessment claims are summarized below.

369. With regard to Kuwait's claims for damage to groundwater, Iraq states that before extensive effort is put into long-term monitoring efforts, the vast body of scientific literature that exists on groundwater contamination by hydrocarbons should be consulted. Further, Iraq argues that groundwater monitoring will only be useful if there is appropriate data that pre-dates 2 August 1990 against which results can be compared.

370. According to Iraq, past studies carried out by Kuwait have been unable to confirm contamination of the aquifers by hydrocarbons. Iraq therefore questions the need for additional monitoring. Furthermore, Iraq states that any assessment of groundwater treatment technologies is premature, given that no contamination has been confirmed. Iraq also argues that even if the monitoring wells detected the presence of hydrocarbons, that would not prove that leaks were occurring from oil well casings. Any such contamination could be the result of ongoing oil industry operations at the oil fields that are near the aquifers.

371. With regard to Kuwait's allegations of damage to its marine environment, Iraq states that Kuwait's coastal area has been subject to high volumes of oil production, loading and transportation activities, both nationally and internationally. Kuwait's marine environment is exposed to chronic oil pollution from the tanker traffic and associated operational discharges and spills:

> "The Arabian Gulf is the most exposed body of water, to oil pollution, in the world. This is due to its role as the 'Middle East's Oil

> Highway'. In the seventies, approximately 1 million barrels of oil were spilled annually in the Gulf. This figure had risen to 2 million barrels in the eighties prior to the 1991 war. Thirty-nine confirmed incidents of oil pollution, out of total reported 422 incidents, were recorded from May 1981 to June 1987 in the Gulf. The incidents varied from sighting of oil sheen to oil well blow-out." (Citations omitted)

372. Iraq states that "barely 1 per cent of the spilled oil may get dispersed, suspended or dissolved in water" and that because the biodegradation process takes place quite quickly in warm water, one can "optimistically presume that in warm tropical water roughly half of the spilled oil will disappear during the first 24h after an oil spill". Iraq concludes that oil originating from the spill may have left the Persian Gulf region "in dissolved/dispersed form in deeper out flowing water, perhaps with a few drifting tarballs, through the Strait of Hormuz via the Gulf of Oman".

373. With regard to Kuwait's claims for the monitoring of the oil lakes, Iraq argues that the true extent of the oil lakes is "ambiguous", and that even though Kuwait states that the affected area is 49 square kilometres, "probably now there is none". Iraq also states that because Kuwait pumped and sold all of the oil that could be collected after the spills, "the remaining fraction is heavy end products which are exposed [to] photo-oxidation that weather the compounds into inert carbon fragments which do not affect plant growth or public health". Indeed, Iraq argues that "such heavy end compounds are very useful in improving soil productive properties". Further, Iraq states that the oil lakes pose no risk of groundwater contamination because the oil did not penetrate the soil to depths greater than 40 centimetres.

374. Further, and in any event, Iraq maintains that very high temperatures over a long time "will influence the degradation of oil compounds in addition to very high solar radiation and the accumulation of soil particles". All the above-mentioned factors, "will accelerate ... the degradation of oil compound[s] chemically and physically".

375. Iraq argues that the proposed remediation technologies for the oil lakes are expensive, complicated and environmentally unsafe, and that biodegradation and photo-oxidation are easier, less expensive and environmentally safe. Any testing of soil remediation technologies should be carried out on limited patches of soil.

376. Iraq's objections were challenged by Kuwait during the oral proceedings. According to Kuwait, the objective of monitoring and assessment activities is to identify the nature, quantum and source of damage that may have been suffered as a result of Iraq's invasion and occupation of Kuwait. As such, they are intended to help Kuwait to determine whether environmental damage has been suffered and, if so, what is

the nature and extent of the damage. Consequently, Kuwait maintains that it is neither logical nor appropriate to require a claimant to demonstrate the presence of pollutants, or to specify the nature of the damage that has been caused, prior to the commencement of monitoring and assessment.

377. As previously noted by the Panel in paragraphs 29 and 30, proof of environmental damage is not a prerequisite for a monitoring activity to be compensable in accordance with paragraph 35 of Governing Council decision 7; nor should a monitoring and assessment activity be considered unreasonable solely because it might be difficult for a claimant to differentiate between damage resulting from Iraq's invasion and occupation of Kuwait and damage that may have resulted from other causes.

B. Impacts on groundwater and surface water

1. Claim No. 5000373

378. Kuwait seeks compensation in the amount of USD 842,812 for two completed studies that investigated the extent of pollution of the Raudhatain and Umm Al-Aish aquifers as a result of Iraq's invasion and occupation of Kuwait. Kuwait alleges that these aquifers were polluted by the oil lakes and by the water used to fight the oil fires.

379. One study, to assess groundwater pollution caused by oil from the damaged oil wells, was completed in 1992. The other study, to assess the long-term risk of pollution to the aquifers, was completed in 1996. The studies were undertaken by the Kuwait Institute of Scientific Research ("KISR") under contract with Kuwait.

380. The Panel finds that the studies constituted reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

381. Kuwait provided only summary information on the costs of these studies. No invoices or receipts were provided. Statements from two KISR employees were filed to explain this evidentiary shortcoming. The first statement alleged that Iraq destroyed much of KISR's infrastructure for project management and the monitoring of costs, with the result that KISR was unable to track labour costs for these two studies. The second statement asserted that total approved budgets for KISR projects represent a conservative estimate of the actual costs of the projects, and that actual expenditures for KISR projects commonly exceed the total approved budgets.

382. The Panel finds that the evidence provided by Kuwait is insufficient to demonstrate the circumstances and amount of the claimed loss. Kuwait has not provided a convincing explanation for the absence of such evidence.

383. The Panel, therefore, finds that Kuwait has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

384. Consequently, no compensation is recommended for this claim.

2. Claim No. 5000374

385. Kuwait seeks compensation in the amount of USD 981,635 for a project to investigate current groundwater quality in the Raudhatain and Umm Al-Aish aquifers. Kuwait proposes to determine the extent of petroleum contamination of groundwater that may have been caused by the oil lakes and oil-laden fire-fighting water that resulted from Iraq's invasion and occupation of Kuwait. According to Kuwait, the project is intended to confirm and build upon the initial findings of the studies in claim No. 5000373 (paras. 378-384), and would involve the installation of monitoring wells.

386. In the Panel's opinion, it is appropriate for Kuwait to follow up the groundwater monitoring work previously undertaken, and collect additional data before considering remedial options. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

387. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XVIII to this report.

388. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The cost of well installation has been reduced;

(b) The cost of equipment has been reduced; and

(c) The cost of labour has been reduced to reflect a decrease in the labour required for work plan development and preparation of the final report.

These adjustments reduce the estimated cost to USD 441,523.

389. The Panel, therefore, recommends compensation in the amount of USD 441,523 for this claim.

3. Claim No. 5000375

390. Kuwait seeks compensation in the amount of USD 830,661 for a project to evaluate technologies for treating groundwater in the Raudhatain and Umm Al-Aish aquifers that may have been contaminated as a result of Iraq's invasion

and occupation of Kuwait. Kuwait proposes to conduct pump tests at strategic locations of the two aquifers. Treatability tests will be conducted to assess the effectiveness of the three treatment processes proposed: calcium removal, air stripping and carbon adsorption.

391. In the view of the Panel, it is appropriate for Kuwait to attempt to evaluate cost-effective strategies for the treatment of groundwater that may have been contaminated.

392. The Panel, therefore, finds that the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

393. Kuwait calculated the cost of this project by applying "an indirect cost mark-up factor" to the total estimated cost of constructing and installing a groundwater treatment system. An additional amount was included as "contingency". In the Panel's opinion, this method of cost estimation has resulted in a substantial overstatement of the costs and is, in any case, not appropriate for a project of this type.

394. The Panel has developed an estimate of the reasonable cost of the project. This estimate involves costing the pump tests, the treatment processes and the labour required. Water quality tests have been eliminated because they should be conducted as part of the groundwater investigation programme in claim No. 5000374 (paras. 385-389). The resulting estimate amounts to USD 638,516.

395. The Panel, therefore, recommends compensation in the amount of USD 638,516 for this claim.

4. Claim No. 5000376

396. Kuwait seeks compensation in the amount of USD 10,922,933 for a ten-year programme to monitor groundwater near oil wells that were damaged as a result of Iraq's invasion and occupation of Kuwait. The purpose of the programme would be to determine whether any leaking oil from damaged well casings is affecting or may affect groundwater aquifers. Kuwait proposes to install a network of monitoring wells in five oil fields between the oil wells and water wells. Sampling and analysis of each monitoring well would be undertaken quarterly to detect the presence of, inter alia, petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylenes, polynuclear aromatic hydrocarbons, nickel and vanadium.

397. In the Panel's opinion, leaks from damaged oil well casings could contaminate Kuwait's groundwater resources with the passage of time. Damage to these casings may not be readily apparent. It is, therefore, appropriate for Kuwait to attempt to monitor potential leaks from the well casings.

398. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

399. Following a review of the programme as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XIX to this report.

400. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) Installation costs of monitoring the wells have been reduced; and

(b) Labour and equipment costs have been adjusted.

These adjustments reduce the estimated cost to USD 4,873,620.

401. The Panel, therefore, recommends compensation in the amount of USD 4,873,620 for this claim.

C. Impacts on the marine and coastal environment

1. Claim No. 5000377

402. Kuwait seeks compensation in the amount of USD 612,600 for expenses related to three completed preliminary studies to monitor and assess the effects on its marine resources of the oil pollution that resulted from Iraq's invasion and occupation of Kuwait.

403. According to Kuwait, the first study, which was completed in 1992, assessed the impact of oil pollution on zooplankton resources in Kuwait's marine environment. The second study, completed in 1993, assessed the impact of oil pollution on feed-water for desalination plants. The third study, which assessed the impact of oil pollution on Kuwait's shrimp nursery grounds, was completed in 1995.

404. Kuwait contracted with KISR to conduct the first and second studies. Kuwait contracted with KISR, the Kuwait Foundation for the Advancement of Sciences and the Environmental Protection Council to conduct the third study.

405. There is evidence in the scientific literature which suggests that there is a link between damage to Kuwait's marine environment and the millions of barrels of oil released into the Persian Gulf as a result of Iraq's invasion and occupation of Kuwait.

406. The Panel finds that the three studies constituted reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

407. The amount claimed appears to be a reasonable cost for the three studies. However, Kuwait provided only summary information on the costs of the studies. No invoices or receipts were provided. Statements from two KISR employees were filed to explain this evidentiary shortcoming. The first statement asserted that Iraq destroyed much of KISR's infrastructure for project management and the monitoring of costs, with the result that KISR was unable to track labour costs for these three studies. The second statement asserted that total approved budgets for KISR projects represent a conservative estimate of the actual costs of the projects, and that actual expenditures for KISR projects commonly exceed the total approved budgets.

408. The Panel finds that the evidence provided by Kuwait is insufficient to demonstrate the circumstances and amount of the expenses claimed. Kuwait has not provided a convincing explanation for the absence of such evidence.

409. The Panel, therefore, finds that Kuwait has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

410. Consequently, no compensation is recommended for this claim.

2. Claim No. 5000378

411. Kuwait seeks compensation in the amount of USD 57,554,587 for a five-year monitoring programme to identify and assess the long-term impacts on Kuwait's marine environment of the millions of barrels of oil released into the Persian Gulf as a result of Iraq's invasion and occupation of Kuwait.

412. The Panel notes that although several studies have been conducted to evaluate the impacts of oil on marine resources in the Persian Gulf, existing data are insufficient to enable a full assessment of the long-term effects on the productivity of marine fisheries and nurseries in Kuwait. In the Panel's view, the approaches and protocols to be followed in the programme are internationally recognized. Kuwait's intention to use existing data to assist study design and help determine whether there are incremental impacts due to Iraq's invasion and occupation of Kuwait, is appropriate. The period of five years proposed is reasonable, given that the purpose of the programme is to assess the long-term impacts of the oil pollution on the marine environment.

413. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

414. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XX to this report.

415. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) All costs relating to the proposed analysis of volatile organic compounds in subtidal sediment and water samples have been eliminated because it is unlikely that such analysis will provide useful information ten years after the release of oil;

(b) The cost of proposed fish bioassays has been reduced to take into account a reduced number of bioassays; and

(c) The proposed rental costs of vessels, the costs estimated for professional and technician labour during the scientific cruises, and the costs of report preparation have been reduced.

These adjustments reduce the estimated cost to USD 37,546,888.

416. The Panel, therefore, recommends compensation in the amount of USD 37,546,888 for this claim.

3. Claim No. 5000397

417. Kuwait seeks compensation in the amount of USD 76,620,762 for a monitoring programme to obtain information on the amount and type of oil pollution caused to its shoreline as a result of Iraq's invasion and occupation of Kuwait. The data obtained would provide the basis for the evaluation of treatment technologies for the "oiled shoreline".

418. Iraq, in its written response, argues that the coastal environment of the Persian Gulf has always been subject to chronic oil pollution of varying degrees. Iraq further contends that the scientific properties of oil are such that "barely 1 per cent of the spilled oil may get dispersed, suspended or dissolved in water". In addition, Iraq states that the environment of the Persian Gulf is conducive to the biodegradation of oil compounds in the marine environment, and that such biodegradation is a "well recognized factor of self-purification".

419. The Panel recognizes that some biodegradation of released oil took place. However, the evidence in the scientific literature indicates that large quantities of oil were washed onto the shores of Kuwait; shoreline studies conducted several years after the spill indicate that substantial amounts remain. Therefore, it is appropriate for Kuwait to attempt to ascertain the extent of shoreline contamination attributable to Iraq's invasion and occupation of Kuwait.

420. The Panel considers that the objectives of the programme and the methods to be used are appropriate. The programme is, therefore, likely to provide useful data on the extent, concentration, nature, and origin of oil pollution along the coast of Kuwait.

421. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

422. However, the Panel considers that the scale of the programme should be reduced. In particular, the number and type of chemical analyses proposed can be reduced substantially while still providing a sound basis for ascertaining the extent of pollution and for taking decisions on possible measures of remediation. Further, the Panel finds the time and labour needed to complete the programme to be less than that stated in the claim.

423. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XXI to this report.

424. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The costs of laboratory analyses have been reduced to reflect the reduced number of samples;

(b) The cost of labour has been reduced to take account of the reduction in the amount of labour required; and

(c) The cost of equipment and vehicles has been reduced.

These adjustments reduce the estimated cost to USD 18,077,770.

425. The Panel, therefore, recommends compensation in the amount of USD 18,077,770 for this claim.

4. Claim No. 5000398

426. Kuwait seeks compensation in the amount of USD 157,249,044 for a project to study technologies to treat areas of its shoreline that may have been contaminated by oil as a result of Iraq's invasion and occupation of Kuwait. The project would consist of a screening process to assess different technologies that might be effective in treating and restoring contaminated areas ("oiled shoreline").

427. As previously noted, the evidence in the scientific literature indicates that Kuwait's shoreline was heavily polluted by oil as a result of Iraq's invasion and occupation of Kuwait. The evidence also shows that persistent contamination by oil poses risks to the environment and to human health. It is, therefore, appropriate for Kuwait to attempt to identify technologies for eliminating or reducing any such contamination.

428. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

429. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XXII to this report.

430. Kuwait developed its estimate of the cost of the project by applying an "indirect cost mark-up factor" to the estimated total cost of recovering and disposing of contaminated material from the affected shoreline. The "direct cost" of recovery and disposal was calculated on the basis of an estimated amount of contaminated material to be treated or disposed of plus the assumed unit cost of a thermal remediation technology to be used for the purpose. A "quantity contingency" of ten per cent was added to obtain the "implemented cost", and a series of indirect cost mark-up factors was then applied to this "implemented cost" to determine the "indirect cost" of the remediation programme.

431. In the Panel's opinion, this method of cost estimation has resulted in a substantial overstatement of the costs and is, in any case, not appropriate for a project of this type. The Panel has developed a revised estimate of the reasonable cost of the project by separately costing the various components. This revision has resulted in a drastic reduction of the estimated cost of the project. The revised estimate amounts to USD 8,237,792.

432. The Panel, therefore, recommends compensation in the amount of USD 8,237,792 for this claim.

433. The Panel notes that this project is virtually identical to the project proposed by Saudi Arabia in claim No. 5000411 (paras. 606-616). The Panel considers that the two Claimants could reduce costs, increase scientific benefits, and produce consistent results by co-ordinating their efforts and sharing information. The Panel, therefore, considers that it would be desirable for Kuwait and Saudi Arabia to co-operate in undertaking their respective projects.

5. Claim No. 5000399

434. Kuwait seeks compensation in the amount of USD 543,792 for a study to determine whether there is any sunken oil in its marine environment as a result of the release of oil during Iraq's invasion and occupation of Kuwait. Kuwait proposes to use aerial surveys, acoustical technology and commercial divers for this study.

435. Iraq, in its written response, states that most of the oil that might have sunk would have been in the form of droplets that are not capable of physically conglomerating. Iraq has also pointed out that the temperature in the region, photo-oxidation, and the high salinity of the Persian Gulf would have changed the physical nature of the oil, making it unlikely that significant amounts of sunken oil remain in the Persian Gulf.

436. In the Panel's view, the methodology proposed for the study has several defects. Aerial surveys are not likely to generate useful information because any sunken oil would most probably have been buried by sediment during the ten years that have elapsed since Iraq's invasion and occupation of Kuwait, and thus would not be visible from the air. In addition, water clarity in the area is poor, further limiting the usefulness of aerial surveys.

437. Furthermore, Kuwait has not indicated how the study would differentiate sunken oil resulting from Iraq's invasion and occupation of Kuwait from other oil that was released into the Persian Gulf prior to or following the invasion.

438. In the Panel's opinion, the study as proposed is unlikely to identify sunken oil attributable to Iraq's invasion and occupation of Kuwait in quantities that would pose a significant risk to the environment so long after Iraq's invasion.

439. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

440. The Panel, therefore, recommends no compensation for this claim.

6. Claim No. 5000400

441. Kuwait seeks compensation in the amount of USD 1,985,633 for a study to assess technologies to deal with sunken oil that may have resulted from Iraq's invasion and occupation of Kuwait. The study would use a screening process to assess different technologies for collecting and treating sunken oil and associated contaminated material, and for restoring marine and coastal resources that may have been affected.

442. For the reasons stated in relation to claim No. 5000399 (paras. 434-440) the Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

443. Accordingly, the Panel recommends no compensation for this claim.

7. Claim No. 5000401

444. Kuwait seeks compensation in the amount of USD 208,455 for a study to assess and evaluate loss of beach use that may have resulted from Iraq's invasion and occupation of Kuwait. Kuwait states that during Iraq's invasion and occupation of Kuwait, residents of Kuwait were not allowed near the beaches. After liberation, the beaches could not be used until mines and ordnance were cleared. This resulted in the loss of a valuable environmental amenity for Kuwait and its residents. Kuwait would use the "travel cost" methodology to determine the value of the loss.

445. Kuwait has failed to provide details of the project that would make it possible to evaluate its potential usefulness. In the view of the Panel, the passage of time and high turnover rates of the expatriate communities in Kuwait would make it difficult for Kuwait to obtain reliable data from interviews occurring more than ten years after Iraq's invasion and occupation of Kuwait. Furthermore, the possibility that changes in recreational beach use patterns may be due to other factors, would raise questions about the validity of any results obtained from the study.

446. Accordingly, the Panel finds that the study does not constitute reasonable monitoring and assessment of environmental damage for the purposes of paragraph 35(c) of Governing Council decision 7.

447. The Panel, therefore, recommends no compensation for this claim.

8. Claim No. 5000402

448. Kuwait seeks compensation in the amount of USD 184,125 for a study to assess the loss of recreational sport fishing opportunities that may have resulted from Iraq's invasion and occupation of Kuwait. Kuwait alleges that recreational sport fishing was banned during Iraq's invasion and occupation of Kuwait. The shoreline was declared a restricted zone and marina managers were not allowed to enter their marinas. After the liberation of Kuwait, the risks posed by the presence of mines and other ordnance restricted sport fishing throughout Kuwaiti waters. The study would use the "travel cost" methodology to determine the value of the loss suffered by Kuwait.

449. In the view of the Panel, this study suffers from the same defects as those indicated in respect of the study on loss of beach use (claim No. 5000401, paras. 444-447). For the reasons given for rejecting that claim, the Panel considers that this study is unlikely to be of much utility. Accordingly, it finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

450. The Panel, therefore, recommends no compensation for this claim.

D. Impacts on the terrestrial environment

1. Claim No. 5000432

451. Kuwait seeks compensation in the amount of USD 84,575,306 to monitor and assess environmental damage caused by the oil lakes that were created as a result of Iraq's invasion and occupation of Kuwait, and to assess oil lake treatment technologies to abate harm and restore the environment. Kuwait states that the oil lakes were created when Iraqi forces damaged 798 oil wellheads with explosives, releasing vast quantities of oil. Kuwait maintains that over 20 million cubic metres of petroleum-contaminated soil covering more than 49 square kilometres still remain in the areas covered by

the oil lakes. According to Kuwait, the oil lakes present a continuing risk to Kuwait's public health, groundwater resources, vegetation, and wildlife.

452. The purpose of the programme would be to determine the spatial extent and physical nature of the oil lakes and to determine the most efficient and cost-effective technology to clean up the contaminated soil.

453. Iraq argues that the true spatial extent of the oil lakes is "ambiguous", and that even though Kuwait states that the affected area is 49 square kilometres, "probably now there is none". Iraq further states that, to the extent that any oil remains, such oil would be heavy end products that are useful in improving soil productive properties. Regarding the proposed technology treatment assessment, Iraq argues that the proposed remediation technologies are expensive, complicated and environmentally unsafe. Iraq argues that biodegradation and photo-oxidation are easier, less expensive and environmentally safe.

454. Iraq also states that this claim duplicates another claim for environmental damage that has been filed by the Kuwait Oil Company. Kuwait, however, has specifically stated in its Statement of Claim that the present claim does not include any monitoring and assessment covered by the claim of the Kuwait Oil Company.

455. In any case, the Panel will review the Kuwait Oil Company claim in question in a future instalment and will ensure that there is no duplication in compensation.

456. There is abundant evidence in the scientific literature of the extensive contamination of Kuwait's environment by the oil lakes that were directly caused by the actions of Iraqi forces. The Panel is also aware that considerable amounts of oil currently remain in the oil lakes. These oil lakes may pose persistent ecological and human health risks, including risks to scarce groundwater resources. It is therefore appropriate for Kuwait to attempt to assess the nature and extent of these risks.

457. With regard to Iraq's comments on the cost-effectiveness of remediation techniques, the Panel notes that one of the purposes of the programme is to evaluate the effectiveness and costs of different techniques.

458. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

459. Kuwait developed its estimate of the cost of the programme by applying an "indirect cost mark-up factor" to the estimated total cost of recovering and disposing of the contaminated soil. This method of cost estimation has resulted in a substantial overstatement of the costs and is, in any case, not appropriate for a programme of this type.

460. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XXIII to this report.

461. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The budget for the analysis of remote sensing data has been reduced;

(b) The cost of hiring a contractor to clear ordnance from the oil lakes prior to conducting fieldwork has been reduced;

(c) The budget for the Geographic Information System has been reduced to cover only the incremental costs of incorporating additional information obtained from the programme;

(d) The cost of the ecological risk assessment has been reduced to reflect reductions in the overall effort for this project; and

(e) A reduction has been made to take into account Kuwait's statement that the human health risk assessment described in this claim will be carried out in conjunction with its public health monitoring.

These adjustments reduce the estimated cost to USD 10,484,988.

462. The Panel, therefore, recommends compensation in the amount of USD 10,484,988 for this claim.

463. The Panel notes that much of the information generated during the treatment technology assessment for Kuwait's "oiled shoreline" (claim No. 5000398) will be directly applicable to the remediation of the oil lakes. Therefore, the Panel recommends that these two programmes be co-ordinated in order to avoid duplication of effort.

464. The Panel also urges that the risks of remediation be carefully considered, especially when it involves excavation of sensitive desert soils. Although in some areas the degree of contamination might make excavation unavoidable, in less contaminated areas excavation could pose greater environmental risk than natural recovery.

2. Claim No. 5000433

465. Kuwait seeks compensation in the amount of USD 160,344 for a project to determine the area of its desert surface that was damaged by the construction and removal of military fortifications, and to conduct an assessment of remediation technologies.

466. Kuwait alleges that military activities resulting from Iraq's invasion and occupation of Kuwait caused extensive disruption of its fragile desert

surface, and that this accelerated soil erosion, increased sand movement and increased the incidence of dust and sand storms. The construction of military fortifications and vehicular movements also caused significant damage to natural vegetation and wildlife. Kuwait contends that restoration of "desert pavement" areas and re-vegetation of other damaged areas are essential to prevent further encroachment of sand dunes into its metropolitan areas.

467. In its written response, Iraq challenges Kuwait's statement that the erosion of desert soil was caused by military activities. Iraq argues that erosion is a natural phenomenon of the desert ecosystem in Kuwait. It states that most of the military vehicles used paved roads in Kuwait, even outside cities, and that this reduced the effect of the vehicles on desert surface sediment and vegetation. Iraq further argues that truck movements, fortifications, defence lines, oil trenches, mines, smoke oil mist and soot had only a temporary influence on the desert ecosystems which should be distinguished from permanent factors such as ploughing, digging of shrubs, and severe overgrazing. In addition, Iraq states that such disturbances in the desert ecosystem can be recovered by good years of rainfall and the ability of desert shrubs to adapt to such disturbances.

468. There is abundant evidence in the scientific literature that the military activities in Kuwait caused damage to the desert environment. There is also evidence that much of this damage occurred in desert areas other than paved roads. Furthermore, the evidence indicates that the effects of these activities were not temporary and may still persist. Accordingly, it is appropriate for Kuwait to attempt to monitor and assess the scale of any such damage.

469. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

470. Following a review of the cost estimates presented by Kuwait, the Panel finds that the amount claimed is reasonable.

471. The Panel, therefore, recommends compensation in the amount of USD 160,344 for this claim.

3. Claim No. 5000434

472. Kuwait seeks compensation in the amount of USD 38,684,607 for a project to monitor and assess areas of its desert surface contaminated by the "tarcrete" that formed as a result of oil releases and fallout from the oil fires that were caused as a result of Iraq's invasion and occupation of Kuwait. Tarcrete was formed when oil droplets released by the oil fires into the atmosphere were deposited on the desert surface, where they mixed with sand and gravel to form a concrete-like layer.

473. There is evidence in the scientific literature that Kuwait's desert environment was subjected to extensive tarcrete contamination as a result of the oil releases and oil fires. Because the "tarcrete"-affected areas may pose persistent ecological and human health risks, it is appropriate for Kuwait to attempt to identify and evaluate effective remediation strategies.

474. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

475. Kuwait developed its estimate of the cost of the programme by applying an "indirect cost mark-up factor" to the estimated total cost of recovering and disposing of the contaminated material. This method of cost estimation has resulted in a substantial overstatement of the costs and is, in any case, not appropriate for a programme of this type.

476. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XXIV to this report.

477. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The budget for the analysis of remote sensing data has been reduced;

(b) The budget for the Geographic Information System has been reduced to provide only for the incremental costs of incorporating additional information gathered by the programme; and

(c) The cost of the ecological risk assessment has been reduced to reflect reductions in the overall effort for this project; and

(d) A reduction has been made to take into account Kuwait's statement that the human health risk assessment described in this claim will be carried out in conjunction with its public health monitoring.

These adjustments reduce the estimated cost to USD 7,246,880.

478. The Panel, therefore, recommends compensation in the amount of USD 7,246,880 for this claim.

479. The Panel notes that much of the information generated during the treatment technology assessment for the oil lakes (claim No. 5000432) will be directly applicable to this project. Therefore, the Panel recommends that these two projects be co-ordinated in order to avoid duplication of effort.

480. The Panel also urges that the risks of remediation be carefully considered, especially when it involves excavation that causes additional

disturbance to sensitive desert soils. Although in some areas the degree of contamination might make excavation unavoidable, in less contaminated areas, excavation could pose a greater environmental risk than natural recovery.

4. Claim No. 5000435

481. Kuwait seeks compensation in the amount of USD 390,920 for a project to monitor and assess environmental damage in its territory from saturation bombing and the open burning or detonation of unexploded ordnance. Kuwait states that following Iraq's invasion and occupation of Kuwait, thousands of tons of unexploded ordnance and over a million land mines were recovered. The majority of these munitions were destroyed, either in place or at centralized locations. Kuwait states that open burning or detonation of ordnance and saturation bombing cause environmental damage in the form of residual chemical contamination of soil.

482. Kuwait proposes to collect information on the location, distribution patterns and levels of residual explosives and explosive-related contamination in the sites in Kuwait where there was open burning or detonation of unexploded ordnance or saturation bombing. Kuwait also proposes to collect information on technologies to restore the desert surface.

483. Iraq argues in its written response that the mines and ordnance were used by the military in very limited areas, that they had very minor effects on the total vegetation of the desert, and that the plants could have recovered in a short time.

484. In the Panel's opinion, the destruction of large amounts of mines and unexploded ordnance could have led to environmental damage, including soil contamination and loss of vegetation. Thus, it is appropriate for Kuwait to undertake studies to assess the extent of such damage or loss.

485. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

486. Following a review of the cost estimates presented by Kuwait, the Panel finds that the amount claimed is reasonable.

487. The Panel, therefore, recommends compensation in the amount of USD 390,920 for this claim.

488. The Panel urges Kuwait to consider carefully the risks of remediation, especially when it involves excavation. In ordnance disposal sites with low levels of contamination, active remediation may pose a greater environmental risk than natural recovery.

5. Claim No. 5000436

489. Kuwait seeks compensation in the amount of USD 184,125 for a study to assess the economic value of the loss of desert recreational camping opportunities that may have resulted from Iraq's invasion and occupation of Kuwait. Kuwait states that during Iraq's invasion and occupation of Kuwait, its residents were not allowed to use desert camping sites, and that, after liberation, the sites could not be used until mines and ordnance were cleared. The study would use the "travel cost" methodology to determine the economic value of the loss of this amenity.

490. In its written response, Iraq asserts that camping activities are a "personal matter", and that, although they may affect some people economically, they have no relation to environmental problems. Iraq further argues that camping itself is an activity that usually results in deterioration of the environment.

491. In the view of the Panel, this study suffers from the same defects as those stated in relation to the studies on loss of beach use (claim No. 5000401, paras. 444-447) and loss of recreational sport fishing opportunities (claim No. 5000402, paras. 448-450). For the same reasons, the Panel considers that this study is unlikely to be of much utility.

492. Accordingly, the Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

493. The Panel, therefore, recommends no compensation for this claim.

E. Public health impacts

1. Common elements

494. Kuwait alleges that Iraq's invasion and occupation of its territory resulted in many adverse public health effects, and will continue to pose serious risks to the health of its population. According to Kuwait, long-term risks to public health are posed by pollutants that were released into the environment from the oil spill and oil fires, the traumatic stress experienced by the population, and the collapse of Kuwait's public health infrastructure during Iraq's invasion and occupation of Kuwait.

495. According to Kuwait, although short-term and medium-term adverse health effects of Iraq's invasion and occupation of Kuwait have already been identified, the long-term effects remain largely unknown. Kuwait, therefore, considers it necessary to conduct a surveillance programme to enable it to identify any increased long-term health risks so that appropriate prevention and treatment measures may be undertaken.

496. According to Kuwait, a carefully designed surveillance programme would enable it to "co-ordinate the collection of existing and future data on all

health-related aspects of the Iraqi Aggression; identify and monitor exposed individuals; provide diagnoses of diseases in their primary stages; and study associations between environmental contamination, public health infrastructure damage, and traumatic events resulting from the Iraqi Aggression and adverse health effects".

497. Kuwait contends that failure to conduct such a surveillance programme would leave substantial gaps in knowledge concerning the long-term human health effects of Iraq's invasion and occupation of Kuwait which could prevent the identification and implementation of appropriate prevention and treatment programmes.

498. The surveillance programme proposed by Kuwait consists of five related components:

(a) Establishment and operation of a data repository and exposure registry for five years;

(b) A human health risk assessment;

(c) Studies to determine long-term health impacts. These studies would also provide support and guidance for other environmental monitoring and assessment activities relating to Iraq's invasion and occupation of Kuwait;

(d) A five-year clinical monitoring programme; and

(e) A public health survey.

These components are reviewed separately as claim Nos. 5000403 to 5000407 in paragraphs 506-532 below.

499. In its written response, Iraq raises general objections to the public health monitoring and assessment claims of Kuwait. It states that the detection of a substance does not, in any way, imply that it will cause damage. According to Iraq "[b]oth the concentration and duration must be of a certain magnitude in order to cause the damage". Iraq also argues that it is "illogical" to ask for compensation for unspecified "health damage", and that such damage must be specified clearly so that the source can be identified. It states that more details and more precise "effects" must be identified before any monitoring and assessment programme can commence.

500. Furthermore, Iraq questions how Kuwait would be able to identify any damage to public health ten years after the events that are alleged to have given rise to the damage. In particular, it doubts whether Kuwait would be able to distinguish damage or risks to public health attributable to pollutants released by the oil fires from damage or risks from other pollutants to which the populations of the region are continuously exposed. In this regard, Iraq notes that Kuwait is located in one of the major sand

and dust storm regions of the world, and is also exposed to persistent emissions from operational flares of oil wells.

501. Iraq reiterated these views and contentions during the oral proceedings.

502. In its submissions during the oral proceedings, Kuwait stressed that its proposed monitoring activities were intended to identify the nature, quantum and source of adverse health effects that its population may have suffered as a result of Iraq's invasion and occupation of its territory. The proposed activities would assist it to determine whether any environmental damage had been caused and, if so, whether the damage posed significant health risks. Consequently, it argued that it is not reasonable to suggest that it should prove that specific damage had been caused before submitting a claim or claims for monitoring.

503. As stated in paras. 29-30, the Panel does not consider that the absence of prior proof of damage constitutes a valid objection to the award of compensation for reasonable monitoring for the purposes of paragraph 35(d) of Governing Council decision 7.

504. Although the Panel also recognizes that, with the passage of time, it may be difficult for Kuwait to identify public health damage that is solely or primarily attributable to Iraq's invasion and occupation of Kuwait, as opposed to other possible causes, that difficulty does not make it inappropriate for Kuwait to undertake reasonable studies to determine the existence and nature of potential damage.

505. With regard to the contention that some damage to public health could be the result of ambient pollutants in the region, such as those from sand and dust storms or operational flares of oil wells, the evidence in the scientific literature indicates that the adverse effects of these phenomena are distinguishable from those originating from the oil fires and massive oil spill that resulted from Iraq's invasion and occupation of Kuwait. The evidence also shows that the dispersion of large quantities of airborne pollutants from the oil fires and oil spill could have increased the risks of certain health problems, such as respiratory ailments. These risks have the capacity to persist for many years after the events that gave rise to them.

2. Claim No. 5000403

506. Kuwait seeks compensation in the amount of USD 6,906,162 for a programme to establish and operate a data repository and an exposure registry. The data repository would collect and manage health information, including documents and data concerning health problems that may have resulted from Iraq's invasion and occupation of Kuwait, and the medical records of persons participating in the programme. The exposure registry would be used to identify persons who were exposed to environmental pollution and consequential traumas or who were adversely affected by the damage to

Kuwait's medical infrastructure as a result of Iraq's invasion and occupation of Kuwait.

507. There are valid reasons for the inclusion of a data repository and an exposure registry in a long-term public health surveillance programme. These facilities provide a central resource useful to epidemiological and clinical researchers because they help to co-ordinate medical data in a central location. This would make it easier to identify diseases and their potential causes.

508. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

509. Kuwait provided estimates of the costs for staffing, labour and equipment, including computers. The Panel finds these estimates reasonable.

510. Kuwait proposes to construct a new building to house the data repository and exposure registry. The Panel finds that such a facility is necessary for the effectiveness of the programme. The Panel agrees with Kuwait that it would be more cost-effective to construct a new building than to enter into a long-term lease of premises. However, the estimated construction costs presented by Kuwait are excessive and do not take account of the residual value of the building after completion of the programme. The Panel has adjusted the costs accordingly. These adjustments reduce the estimated cost to USD 6,763,546.

511. The Panel, therefore, recommends compensation in the amount of USD 6,763,546 for this claim.

3. Claim No. 5000404

512. Kuwait seeks compensation in the amount of USD 1,150,771 to conduct a human health risk assessment programme. The purpose of the programme would be to identify the potential risks of long-term adverse health effects in Kuwait resulting from Iraq's invasion and occupation of Kuwait. The risk assessment consists of five components, namely:

(a) Compilation of background information and a conceptual model of potential human exposures;

(b) Identification of pollutants considered as presenting potential risks to human health;

(c) An assessment to identify possible pathways by which people were exposed to pollutants, and the likely amounts of exposure;

(d) A toxicity assessment of each potential contaminant considered to present risks to human health; and

(e) A risk assessment integrating the results of the exposure assessment and toxicity assessment.

513. Human health risk assessments are commonly used to identify and assess potential health risks and to provide guidance on the design of monitoring programmes and the development of clean-up standards. In the view of the Panel the basic methodology proposed by Kuwait is consistent with standard practices.

514. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

515. The total amount claimed consists of estimated labour costs. The Panel finds that these costs are reasonable.

516. The Panel, therefore, recommends compensation in the amount of USD 1,150,771 for this claim.

4. Claim No. 5000405

517. Kuwait seeks compensation in the amount of USD 4,940,547 for a programme to identify and assess the long-term health impacts of Iraq's invasion and occupation of its territory. A major part of the programme would be to compare persons exposed to the environmental and infrastructure damage during Iraq's invasion and occupation of Kuwait with those who were not exposed. The programme would also provide support and guidance for other environmental monitoring and assessment activities being undertaken by Kuwait.

518. The programme would involve long-term epidemiological studies, and investigations into relationships between invasion-related environmental damage and changes in disease patterns. The programme would also provide necessary data for the exposure registry envisaged in claim No. 5000403 (paras. 506-511).

519. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

520. Kuwait has presented an estimate of the costs of the various components of the programme, including staffing and labour. The Panel finds that most of the estimates are reasonable and necessary to achieve the objectives stated in the claim.

521. One of the components of the programme is a "feasibility studies working seminar" to be held in Kuwait. The cost estimate includes provision for 12 medical experts to travel from the United States to attend the seminar for five days. The Panel does not consider such a seminar to be necessary, and

has therefore eliminated all expenses related to it. Elimination of these expenses reduces the estimated cost to USD 4,846,396.

522. The Panel, therefore, recommends compensation in the amount of USD 4,846,396 for this claim.

5. Claim No. 5000406

523. Kuwait seeks compensation in the amount of USD 14,121,103 for a clinical monitoring programme. The purpose of the programme would be to trace persons in Kuwait whose health may have been adversely affected as a result of Iraq's invasion and occupation of Kuwait, and to track the development of their clinical symptoms and health problems. The clinical monitoring programme would involve:

(a) A review of existing clinical studies and data;

(b) Clinical testing (pulmonary function tests, X-rays, blood tests, etc.);

(c) Comprehensive medical screening and examinations for sections of the population who may be identified by the exposure registry to be established under claim No. 5000403 (paras. 506-511); and

(d) Integration of the data obtained from the tests and screenings into Kuwait's existing national health care database.

524. The programme is expected to last for at least 40 years. However, the amount claimed is for costs to be incurred during the first five years of the programme.

525. Kuwait has stated, and the Panel agrees, that many public health effects from Iraq's invasion and occupation of Kuwait may only be identified after many years. It is, therefore, appropriate for Kuwait to undertake a long-term clinical monitoring programme as proposed.

526. Accordingly, the Panel finds that the programme constitutes reasonable monitoring of public health, and the expenses qualify as compensation in accordance with paragraph 35(d) of Governing Council decision 7.

527. Following a review of the project as presented by Kuwait, the Panel suggests certain modifications, details of which are set out in annex XXV to this report. In particular, the frequency of medical and X-ray examinations should be reduced. To take account of these modifications, the Panel has made adjustments to the estimates provided by Kuwait. These adjustments reduce the estimated cost of the programme to USD 7,278,268.

528. The Panel, therefore, recommends compensation in the amount of USD 7,278,268 for this claim.

6. Claim No. 5000407

529. Kuwait seeks compensation in the amount of USD 770,190 for a public health survey. The purpose of the survey is to assess the costs of dealing with the increased incidence of various diseases that may have resulted from Iraq's invasion and occupation of Kuwait. Kuwait states that the survey would enable it to obtain health statistics needed to identify disease prevalence patterns among persons who received treatment in the national health care system of Kuwait as well as those who may have received treatment in other ways.

530. The Panel finds that the survey constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

531. Following a review of the cost estimates presented by Kuwait, the Panel finds that the amounts claimed are reasonable.

532. The Panel, therefore, recommends compensation in the amount of USD 770,190 for this claim.

Table 7. Recommended amounts for Kuwait's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)	Amount recommended (USD)
5000373	Groundwater and Surface Water	842,812	nil
5000374	Groundwater and Surface Water	981,635	441,523
5000375	Groundwater and Surface Water	830,661	638,516
5000376	Groundwater and Surface Water	10,922,933	4,873,620
5000377	Marine and Coastal	612,600	nil
5000378	Marine and Coastal	57,554,587	37,546,888
5000397	Marine and Coastal	76,620,762	18,077,770
5000398	Marine and Coastal	157,249,044	8,237,792
5000399	Marine and Coastal	543,792	nil
5000400	Marine and Coastal	1,985,633	nil
5000401	Marine and Coastal	208,455	nil
5000402	Marine and Coastal	184,125	nil
5000432	Terrestrial	84,575,306	10,484,988
5000433	Terrestrial	160,344	160,344
5000434	Terrestrial	38,684,607	7,246,880
5000435	Terrestrial	390,920	390,920
5000436	Terrestrial	184,125	nil
5000403	Public Health	6,906,162	6,763,546
5000404	Public Health	1,150,771	1,150,771
5000405	Public Health	4,940,547	4,846,396
5000406	Public Health	14,121,103	7,278,268
5000407	Public Health	770,190	770,190
Total		460,421,114	108,908,412

VIII. MONITORING AND ASSESSMENT CLAIMS OF THE KINGDOM OF SAUDI ARABIA

Table 8. Saudi Arabia's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)
5000359	Marine and Coastal	3,533,670
5000360	Marine and Coastal	19,549,743
5000361	Marine and Coastal	6,442,735
5000362	Marine and Coastal	1,414,740
5000363	Marine and Coastal	52,337,910
5000364	Marine and Coastal	11,475,985
5000365	Marine and Coastal	693,000
5000408	Marine and Coastal	612,000
5000409	Marine and Coastal	163,907,795
5000410	Marine and Coastal	1,708,685
5000411	Marine and Coastal	148,470,998
5000412	Marine and Coastal	756,553
5000437	Terrestrial	163,879
5000438	Terrestrial	4,143,221
5000439	Terrestrial	554,300
5000440	Terrestrial	3,781,647
5000441	Terrestrial	6,329,843
5000442	Terrestrial	342,496
5000413	Public Health	585,960
5000414	Public Health	13,925,945
5000415	Public Health	1,538,791
5000416	Public Health	9,975,047
5000417	Public Health	28,502,000
5000418	Public Health	1,410,000
Total		482,156,943

A. Overview

533. Saudi Arabia submitted claims for monitoring and assessment of the environmental damage, depletion of natural resources and public health damage that it alleges to have suffered as a result of Iraq's invasion and occupation of Kuwait.

534. Saudi Arabia claims that the massive amounts of oil released into the Persian Gulf polluted its beaches, intertidal areas, seabed, and coastal waters. It states that additional marine and coastal pollution resulted from the oil fires in Kuwait. It alleges that the pollution caused damage to its flora and fauna, and may have impacts on public health.

535. Saudi Arabia also claims that its desert soils and vegetation were severely disrupted by military activities and the effects of the oil fires. These activities are alleged to have resulted in, inter alia, increased soil

erosion; increased risk of damage to human health from inhalation of polluted air; and increased risk of severe adverse effects on desert ecosystems and biodiversity.

536. Finally, Saudi Arabia claims that its population suffered short-term, medium-term, and long-term adverse health effects as a result of this environmental damage.

B. Impacts on the marine and coastal environment

1. Common elements

537. Saudi Arabia seeks compensation for an integrated monitoring and assessment programme to determine the extent of the damage to its marine and coastal resources that may have resulted from Iraq's invasion and occupation of Kuwait. The programme would also provide a scientific basis on which to develop measures to remediate and restore damaged resources. The programme consists of eight projects for monitoring and assessing impacts on the marine and coastal environment, claim Nos. 5000359, 5000360, 5000361, 5000408, 5000409, 5000410, 5000411, 5000412; and four projects for monitoring and assessing impacts on fisheries, claim Nos. 5000362, 5000363, 5000364, 5000365.

538. Saudi Arabia alleges that its offshore waters and nearly 1,000 kilometres of its coastline north of Abu Ali were affected by the oil spill resulting from Iraq's invasion and occupation of Kuwait. According to Saudi Arabia, between 10 and 20 million barrels of oil were released into the Persian Gulf as a result of Iraq's invasion and occupation of Kuwait. This includes oil which Iraq deliberately spilled from five oil tankers, from the Al Ahmadi north tank field via the Sea Island Tanker Terminal, and from the Min al Bakr terminal in Iraq, in addition to leakage from battle-damaged tankers and terminals after the hostilities. Furthermore, Saudi Arabia states that unknown amounts of oil aerosols, soot, toxic combustion products and gases from the oil fires affected the coastal marine environment.

539. Saudi Arabia observes that some of the spilled oil can be accounted for by oil recovery operations that were undertaken in 1991, as well as volatilization and dissolution of oil in the water. However, it alleges that approximately 58 per cent of the oil released remains in the marine and coastal environment. Saudi Arabia states that normal weathering forces may have been relatively ineffective because in many cases the oil penetrated 15 to 20 centimetres below the surface.

540. Saudi Arabia believes that approximately 3.7 million barrels of oil may have sunk to the sea floor. According to Saudi Arabia, its industrial fishing fleet's offshore catch dropped precipitously and has not recovered, possibly because toxic compounds released by sunken oil continue to damage fish populations. However, Saudi Arabia also notes that research carried out in 1992 failed to find sunken oil.

541. Saudi Arabia alleges that oil spilled as a result of Iraq's invasion and occupation of Kuwait caused harm to human health and the environment. It states that continuing human exposure to toxic components of crude oil may occur through swimming, boating, or other recreational activities in the sea, through construction in the coastal zone or through consumption of fish and shrimp from the Persian Gulf. Saudi Arabia states that damage occurred to areas of the coastline which support much of the biological productivity for the entire Persian Gulf. It refers to reports in the scientific literature identifying pervasive contamination which impacted all habitat types and organisms ranging from algal mats to seabirds. Saudi Arabia alleges that scientists found approximately 30 per cent of its mangroves were killed by the spill, and that the mangrove forests continue to decline. Similar impacts were observed in salt marshes, sand beaches and tidal flats.

542. Iraq, in its written response, raises several objections to Saudi Arabia's marine and coastal monitoring and assessment claims. Iraq states that the monitoring and assessment which Saudi Arabia seeks to carry out is unnecessary because the information sought is already available. In particular, it argues that the proposed shoreline survey is unnecessary, because the shoreline area of Saudi Arabia affected by the oil spill was documented in a report and contemporaneous satellite images. It states that all remediation work should be confined to the area identified in the report and satellite images.

543. Iraq states that many studies of post-invasion pollution in the Persian Gulf concluded that the level of pollution was not different from the level before 1991. Specifically, Iraq states that "the source of oil spilled in the Arabian Gulf during the 1991 events was mainly from the oil loading terminals ... [and] ... four sunken and leaking vessels .... The total capacity of the tankers was about ... 2 million barrels".

544. Iraq alleges that natural degradation of petroleum has already remediated the harm, because conditions in the Persian Gulf favour natural petroleum degradation. According to Iraq, although certain petroleum hydrocarbons have direct toxic effects at high rates of exposure, these compounds are highly volatile and are lost to the atmosphere shortly after an oil spill. Iraq states that compounds with possible bioaccumulative effects are mainly polyaromatic hydrocarbons and, in particular, the carcinogen benzo-a-pyrene, which is biodegradable.

545. Iraq asserts that the ongoing pollution of the Persian Gulf makes it impossible to isolate the war as the source of pollution of Saudi Arabia's coastal and marine environment. It contends that if hydrocarbons were detected they would be the result of other recent oil spills, and would be unrelated to the 1991 spill. Iraq alleges that independent studies demonstrated that levels of total hydrocarbons in Persian Gulf waters and sediments after 1991 were lower than levels recorded before 1991.

546. Iraq argues that the proposed oceanographic survey is not essential to the assessment of impacts on fisheries because physical oceanography is not a standard tool to assess fisheries productivity. Iraq further argues that any bioaccumulative effect on finfish would have been observed in the form of tumours on fish bodies, and that no such effect has been recorded in the Persian Gulf. Iraq also states that the marine animals which are claimed to have been affected have relatively short life spans and any bioaccumulative effect of the 1991 oil spill would no longer be apparent. Iraq concludes that overfishing and not oil pollution has always been the main environmental concern in the Persian Gulf regarding commercial fisheries.

547. Iraq reiterated these contentions during the oral proceedings.

548. The Panel finds that there is evidence in the scientific literature that substantial quantities of oil entered Saudi Arabia's marine and coastal environment as a result of Iraq's invasion and occupation of Kuwait. Although some literature suggests that levels of oil contaminants in some habitats are similar to levels observed before Iraq's invasion and occupation of Kuwait, other studies have found evidence of higher pollution levels after 1991 relative to earlier years. Leaching of oil within sediments into the sea was observed by international scientists as recently as two to three years ago. While several studies have pointed towards recovery after 1991, not all parts of the Persian Gulf have received equal attention in the published literature, and areas with elevated levels of oil pollution may persist.

549. The Panel notes that petroleum compounds undergo significant degradation due to a variety of natural chemical, physical, and biological processes. A great deal of weathering occurs within the first 24 hours to a week after a spill. Degradative processes may further reduce the amount of petroleum-based contamination over the course of months or years. However, there is evidence that these processes have not been able to degrade all fractions of the oil even after many years have passed. Furthermore, some localities may have conditions unfavourable to these processes and may therefore still contain pockets of unweathered oil. Several studies have identified such pockets of oil more than two years after the spill. Without investigation, it is impossible to determine the degree to which petroleum remnants and unweathered pockets of oil remain a concern. Thus, in the Panel's view the results of well-designed and conducted surveys, risk assessments, technology treatment assessments, and similar work should develop information useful in assessing possible ongoing impacts and remediation alternatives.

550. Although the Panel recognizes that, with the passage of time, it may be difficult for Saudi Arabia to identify damage that is solely or primarily attributable to Iraq's invasion and occupation of Kuwait, that difficulty does not make it inappropriate for Saudi Arabia to undertake reasonable studies to determine the existence and nature of potential damage. The Panel encourages Saudi Arabia to use a variety of techniques that may allow

researchers to determine the likely source of oil at any particular location (e.g. time trend analyses, spatial analyses, the use of control sites, and the use of oil fingerprinting techniques). Thus, in the Panel's view, studies that investigate the degree to which it is possible to link current levels of oil pollution with Iraq's invasion and occupation of Kuwait should produce useful information.

2. Claim No. 5000359

551. Saudi Arabia seeks compensation in the amount of USD 3,533,670 for a preliminary assessment of the areas of its marine environment that were affected by Iraq's invasion and occupation of Kuwait, including areas that have already been remediated. The assessment would be based on a review of existing marine and coastal data. Saudi Arabia also proposes to establish a GIS and data management system that would incorporate data from other projects in its marine and coastal resources monitoring and assessment programme. In addition, limited field sampling and analysis would be undertaken.

552. As previously noted, there is evidence of damage to Saudi Arabia's marine and coastal areas as a result of Iraq's invasion and occupation of Kuwait. In the Panel's view, it is reasonable for Saudi Arabia to conduct a preliminary assessment of those areas. Saudi Arabia's proposal to refine existing GIS maps is also appropriate.

553. The Panel finds that the programme constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7. However, the Panel considers that certain modifications are necessary.

554. The proposed sampling and analysis component is not necessary because the information to be gained from it can be obtained from a review of existing studies coupled with a less intensive visual shoreline survey of the type discussed in annex XXVIII to this report. This shoreline survey should be conducted to assess the coverage, thickness, and weathering of observed oil, using established post-spill shoreline survey techniques. The survey would provide sufficient information to verify the current distribution of heavily oiled, moderately oiled, and lightly oiled areas, and assist in estimating natural degradation of the oil and in determining the impacts of past clean-up and remediation activities. This survey should use the same staffing and the same sampling transects as proposed for the sampling and analysis component.

555. For the reasons set out below, the Panel does not find the component of the project relating to the survey of sunken oil (claim No. 5000410, paras. 600-605) and the lost beach use survey (claim No. 5000412, paras. 617-619) appropriate.

556. On the basis of the suggested modifications, the Panel has made adjustments to the cost estimates as follows:

(a) The costs relating to the sunken oil and lost beach use surveys have been eliminated;

(b) The costs of laboratory analysis have been eliminated;

(c) Transportation and accommodation costs have been reduced by applying standard rates; and

(d) The costs of travel of local personnel to the United States have been eliminated.

These adjustments reduce the estimated cost to USD 1,861,174.

557. The Panel, therefore, recommends compensation in the amount of USD 1,861,174 for this claim.

3. Claim No. 5000360

558. Saudi Arabia seeks compensation in the amount of USD 19,549,743 for a project to assess the effectiveness of clean-up and remediation measures in coastal areas affected by oil pollution resulting from Iraq's invasion and occupation of Kuwait, and to determine whether additional remediation is required.

559. According to Saudi Arabia, this project is intended to monitor changes in the coastal zone, and is expected to be undertaken after the implementation of clean-up and remediation activities.

560. The Panel notes that claims for remediation activities are to be reviewed in future instalments. Consequently, it has decided to transfer this claim to a later instalment, where it may be reviewed by the Panel with the substantive claims.

4. Claim No. 5000361

561. Saudi Arabia seeks compensation in the amount of USD 6,442,735 for a project to determine the damage that may have been caused to its coastal and offshore coral reefs as a result of Iraq's invasion and occupation of Kuwait. Saudi Arabia proposes to establish sampling sites and transects to estimate the density, diversity and condition of the fish and algal populations of coral reefs, and the incidence of disease among them. For this purpose, 1,000 transects would be sampled through pneumatic coring in ten mainland and island coral reef sampling sites. Data obtained would be used to assess damage to the coral reefs. The data would also serve as a reference for future pollution studies and the selection of remedial options.

562. In its written comments, Iraq contends that this project might duplicate other monitoring and assessment projects proposed by Saudi Arabia.

563. The Panel observes that duplication can be avoided by co-ordination of projects, and has taken the necessary steps to eliminate duplication, where appropriate, or to reduce costs where there is a risk of duplication with other projects that are closely related.

564. Given the quantity of oil that was introduced into the Persian Gulf as a result of Iraq's invasion and occupation of Kuwait, and the large amounts of oil that polluted the coastal zone of Saudi Arabia, the Panel considers it appropriate for Saudi Arabia to attempt to determine the long-term effects of the pollution on the coral reefs in the area.

565. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

566. Following a review of the project as presented by Saudi Arabia, the Panel suggests certain modifications, details of which are set out in annex XXVI to this report.

567. On the basis of the suggested modifications, the Panel has made adjustments to the cost estimates as follows:

(a) The costs of laboratory analysis have been decreased;

(b) The costs of field transport have been reduced; and

(c) Labour costs have been reduced.

These adjustments reduce the estimated cost to USD 4,418,360.

568. Accordingly, the Panel recommends compensation in the amount of USD 4,418,360 for this claim.

5. Claim No. 5000362

569. Saudi Arabia seeks compensation in the amount of USD 1,414,740 to develop an "implementation plan" for projects to evaluate the status of its Persian Gulf fisheries, and to value losses to those fisheries resulting from Iraq's invasion and occupation of Kuwait. Saudi Arabia proposes to develop detailed study designs, including specific sampling plans, sampling locations, control sites, data evaluation methods, and approaches for integrating existing data in the following monitoring and assessment claims: claim No. 5000363 (paras. 574-579); claim No. 5000364 (paras. 580-583); and claim No. 5000365 (paras. 585-587).

570. The implementation plan would review existing data on commercial, subsistence and recreational fisheries. It would also review and identify

gaps in data on fishery stocks, habitats, and overall conditions in the Persian Gulf. This project includes the incremental cost of incorporating data from Saudi Arabia's fishery projects into Saudi Arabia's GIS database and the cost of creating a database to serve all the projects covered by the implementation plan.

571. Historic fishery and pollution data indicates that the Persian Gulf fisheries may have been damaged as a result of Iraq's invasion and occupation of Kuwait. However, as discussed in paragraphs 580-583 and 584-587, the Panel finds that two of the three studies covered by the implementation plan (claim No. 5000364 and claim No. 5000365) are not reasonable. With regard to the third study (oceanographic survey and sampling), the Panel finds that the proposed design work can be better accomplished as part of claim No. 5000363 as modified (paras. 574-579) which includes provision for the costs of the GIS work proposed in this claim.

572. The Panel, therefore, finds that the implementation plan is not necessary, and thus does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

573. Accordingly, the Panel recommends no compensation for this claim.

6. Claim No. 5000363

574. Saudi Arabia seeks compensation in the amount of USD 52,337,910 to undertake a five-year oceanographic survey and sampling project to evaluate long-term adverse effects on its fishery resources in the Persian Gulf of the pollution from the oil spill resulting from Iraq's invasion and occupation of Kuwait. According to Saudi Arabia, the project would include near-shore and offshore sampling of marine organisms, water and sediments, and monitoring of near-shore currents. Approximately 20 analytical tests would be conducted on each sample. Saudi Arabia intends to evaluate both pre-invasion and current data collected from monitoring stations along the coast as part of the implementation plan prior to the commencement of this project.

575. As previously noted, there is evidence in the scientific literature that a large quantity of oil was released into the Persian Gulf during Iraq's invasion and occupation of Kuwait, and that part of this may still be contaminating Saudi Arabia's coastal zone. The results of the project could be useful for an understanding of the potential long-term effects of Iraq's invasion and occupation of Kuwait on the marine environment, and the evaluation of remediation and restoration alternatives.

576. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

577. Following a review of the project as presented by Saudi Arabia, the Panel suggests certain modifications, details of which are set out in annex XXVII to this report. In particular, the number of samples analysed at each site could be reduced without reducing the spatial or temporal scope of the project.

578. On the basis of the modifications suggested, the Panel has developed a revised estimate of the reasonable cost of the programme to achieve the purposes intended. This takes into account programme design and co-ordination, evaluation of coastal monitoring station data and the GIS component originally envisaged under claim No. 5000362. The modifications reduce the estimated cost to USD 18,142,163.

579. The Panel, therefore, recommends compensation in the amount of USD 18,142,163 for this claim.

7. Claim No. 5000364

580. Saudi Arabia seeks compensation in the amount of USD 11,475,985 to assess the loss of commercial fisheries resources that it may have suffered as a result of pollution caused by Iraq's invasion and occupation of Kuwait.

581. The Panel finds that this study would duplicate the work to be undertaken in other monitoring and assessment claims of Saudi Arabia. In particular, the Panel finds that information from the oceanographic survey and sampling project (claim No. 5000363, paras. 574-579), if properly organized, could provide information that would enable Saudi Arabia to achieve several objectives of this study.

582. For that reason the Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

583. The Panel, therefore, recommends no compensation for this claim.

8. Claim No. 5000365

584. Saudi Arabia seeks compensation in the amount of USD 693,000 for a travel cost survey to quantify the loss to its population of recreational fishing opportunities as a result of Iraq's invasion and occupation of Kuwait. Saudi Arabia alleges that the oil spill denied access to the natural and physical resources that support sport fishing, and damaged the natural resource base. The study would include telephone interviews and intercept surveys of individuals at beach sites and boat landings to determine current and pre-invasion use of fishing grounds. Information about the contribution of recreational fishing to household diet would also be collected.

585. In the view of the Panel, the proposed travel cost survey is unlikely to produce reliable data on the effects of Iraq's invasion and occupation of

Kuwait on recreational fishing practices in Saudi Arabia, for comparison with data for the period before Iraq's invasion. The long lapse of time since Iraq's invasion and occupation of Kuwait and the high rate of turnover of expatriate communities would make it difficult to obtain reliable information on sport fishing patterns from current interviews of resource users.

586. The Panel, therefore, finds that the project does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

587. Accordingly, the Panel recommends no compensation for this claim.

9. Claim No. 5000408

588. Saudi Arabia seeks compensation in the amount of USD 612,000 for a project to assess risks to human health and ecological risks posed by oil pollution of its marine and coastal environment as a result of Iraq's invasion and occupation of Kuwait. According to Saudi Arabia, the information obtained from the project would be used in the planning of programmes to repair damage to the marine and coastal environment.

589. In the Panel's view, a project for risk assessment is appropriate, and the methods proposed are internationally recognized. Accordingly, the Panel finds that the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

590. Upon review of the cost estimates presented by Saudi Arabia, the Panel finds that the rates proposed for accommodations are higher than the applicable standard rates. It also finds the amounts claimed for the purchase of vehicles excessive. The Panel has made adjustments to the costs of these items. These adjustments reduce the estimated cost to USD 567,985.

591. The Panel, therefore, recommends compensation in the amount of USD 567,985 for this claim.

10. Claim No. 5000409

592. Saudi Arabia seeks compensation in the amount of USD 163,907,795 for a project to survey the "oiled shoreline" between the Kuwait border and Abu Ali in Saudi Arabia. The purpose of the survey is to obtain information on the location, amount and type of oil pollution of the shoreline that may have occurred as a result of Iraq's invasion and occupation of Kuwait. Saudi Arabia proposes to perform analytical tests on a large number of samples collected during the survey, including tests for volatile organic compounds. The data obtained would provide the basis for detailed remediation planning.

593. The evidence in the scientific literature indicates that extensive oil pollution occurred along Saudi Arabia's Persian Gulf coastline and that the contamination persists in many areas. In the view of the Panel, a survey of the type proposed is a prerequisite to any remediation of the damaged area, and the methods proposed for the survey are internationally recognized.

594. Iraq, in its written response, argues that testing for volatile organic compounds is unrealistic because they are the first to evaporate following an oil spill.

595. The evidence in the scientific literature indicates that, while many of the volatile organic compounds are lost through evaporation, some of them can persist on the shoreline in deeply buried oil deposits. Accordingly, it is appropriate for Saudi Arabia to perform tests for volatile organic compounds on soil samples from the shoreline. However, in the opinion of the Panel, the number and type of chemical analyses can be reduced substantially without impairing Saudi Arabia's ability to obtain useful results.

596. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

597. Following a review of the project as presented by Saudi Arabia, the Panel suggests certain modifications, details of which are set out in annex XXVIII to this report.

598. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The costs of laboratory tests and analyses have been reduced to reflect the decrease in the scale of sampling; and

(b) Corresponding downward adjustments have been made to the costs of labour, travel, accommodation, equipment, field transport and field survey by the application of standard rates or reduction in quantities.

These adjustments reduce the estimated cost to USD 34,976,723.

599. Accordingly, the Panel recommends compensation in the amount of USD 34,976,723 for this claim.

11. Claim No. 5000410

600. Saudi Arabia seeks compensation in the amount of USD 1,708,685 for a study to determine the quantity and location of sunken oil in its marine environment that may have resulted from Iraq's invasion and occupation of Kuwait. Saudi Arabia proposes to develop a survey plan using bathymetric and oceanographic data, together with fate and trajectory modelling of the oil spill. The search for sunken oil would be undertaken, mainly in deep

waters, using aerial and sonar surveys. If sunken oil is found, Saudi Arabia proposes to use divers to examine it visually and retrieve samples for analysis. The information obtained from the survey would eventually be used to formulate a remediation plan.

601. Iraq argues in its written response that the proposed programme would have no utility. According to Iraq, oil droplets from a spill would not combine to form oil pools, but might form small tarballs.

602. The Panel finds several technical problems with the proposed methodology of the survey. Aerial surveys are not likely to detect sunken oil in deep water ten years after it was released, because the oil most probably would have been buried by sediment during that time. Even if sunken oil were found, diver identification and sampling of sunken oil becomes limited in the deep waters where Saudi Arabia proposes to look for them.

603. In the Panel's opinion, the study as proposed is unlikely to identify sunken oil attributable to Iraq's invasion and occupation of Kuwait in quantities that would pose a significant risk to the environment so long after Iraq's invasion.

604. Accordingly, the Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

605. The Panel, therefore, recommends no compensation for this claim.

12. Claim No. 5000411

606. Saudi Arabia seeks compensation in the amount of USD 148,470,998 for a project to evaluate technologies for the remediation of its marine and coastal environment areas from oil pollution resulting from Iraq's invasion and occupation of Kuwait. The programme would assess technologies for treating polluted coastal areas ("oiled shoreline") and for removing and disposing of any sunken oil.

607. Iraq argues in its written response that the proposed assessment of remediation technologies is no more than a feasibility study that would normally be carried out by companies competing for the remediation contract.

608. As noted previously in paragraphs 548-549, evidence in the scientific literature indicates that extensive oil pollution occurred in Saudi Arabia's marine and coastal environment as a result of Iraq's invasion and occupation of Kuwait, and that pollution persists in many areas.

609. In the Panel's opinion it is appropriate for Saudi Arabia to attempt to identify the different technologies that may be used for the remediation of its coastal areas polluted by oil. The results of the assessment would assist Saudi Arabia in selecting appropriate technologies, comparing the

risks and benefits of different remediation measures, and evaluating their cost-effectiveness.

610. The Panel finds that a project to assess technologies for the remediation of polluted shoreline areas constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

611. However, with regard to the sunken oil survey, the Panel has already found that a project to survey for sunken oil does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7 (claim No. 5000410, paras. 600-605). For the same reason, the part of the project that seeks to assess technologies for the remediation of sunken oil does not constitute reasonable monitoring and assessment.

612. Saudi Arabia developed the cost estimate for the project by applying a contingency factor to the estimated cost of remediation of the entire affected area, including treatment of sunken oil. In the Panel's opinion, this method of cost estimation has resulted in a substantial overstatement of the costs and is, in any case, not appropriate for a project of this type.

613. Following a review of the project as presented by Saudi Arabia, the Panel suggests certain modifications, details of which are set out in annex XXIX to this report.

614. The Panel has developed a revised cost estimate for the project by separately costing its various components and using standardized rates. For the reasons already indicated, all costs relating to work on sunken oil have also been eliminated. The revised cost estimate developed by the Panel amounts to USD 12,793,477.

615. Accordingly, the Panel recommends compensation in the amount of USD 12,793,477 for this claim.

616. The Panel notes that this project is closely related to the project of Kuwait in claim No. 5000398 (paras. 426-433). The Panel emphasizes, once again, that effective co-operation between the Claimants is likely to result in reduced costs and increased scientific benefits for both of them. The Panel, therefore, considers that it would be desirable for Kuwait and Saudi Arabia to co-operate in undertaking their respective projects.

13. Claim No. 5000412

617. Saudi Arabia seeks compensation in the amount of USD 756,553 to study the extent to which recreational use of beaches in Saudi Arabia declined as a result of Iraq's invasion and occupation of Kuwait. The study would use a travel cost survey of nationals and expatriates, as well as government

records of beach use, to assess the reduction in beach use and to estimate the economic value of the loss of this amenity as a result of the inability of its residents to use the beaches.

618. For the reasons given by the Panel in relation to claim No. 5000365 (paras. 584-587) the Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

619. The Panel, therefore, recommends no compensation for this claim.

C. Impacts on the terrestrial environment

1. Common elements

620. Saudi Arabia seeks compensation for an integrated monitoring and assessment programme to determine the extent of the damage to its terrestrial resources that may have resulted from Iraq's invasion and occupation of Kuwait. The programme would also provide a scientific basis on which to develop measures to mitigate the damage or to remediate and restore damaged resources. The programme consists of the six projects reviewed as claim Nos. 5000437 to 5000442 (paras. 632-664).

621. Saudi Arabia alleges that damage was caused to large areas of the northeastern Saudi Arabian desert by pollutants from the oil fires. The damage is alleged to include adverse impacts on nomadic agriculture, the desert ecosystem and its biodiversity, soil productivity, and groundwater resources. In addition, deposition of airborne pollutants from the oil fires in Kuwait could have affected the chemistry of soils and the survival of plant species on the ground surface as well as the quality of groundwater resources.

622. Saudi Arabia alleges that damage also resulted from the deployment and movement of troops and associated support and combat vehicles. According to Saudi Arabia, most of the northern regions of its territory are plains covered by gravel and rock fragments that form a desert pavement. In many areas this desert pavement is bound by mineral matter to form a stable crust above fine soils that are highly susceptible to wind erosion. Saudi Arabia alleges that disruption of the desert pavement by troop and vehicle movements increased soil erosion and the frequency and magnitude of dust and sandstorms.

623. In its written response, Iraq states that the northeastern region of Saudi Arabia is a thinly populated "barren desert plateau with a low annual precipitation and very rare sparse vegetation". Iraq further states that "the dry hot climate affects the development of the soil, which is immature, primitive desert soil; characterized by shallow depth, light texture, and negligible content of organic substances", and that it is located in one of the major sand and dust storms regions of the world. Iraq argues that the

area is subject to constant air pollution as a result of the operations of the oil industry.

624. With regard to testing for groundwater pollution, Iraq alleges that "[a]ccording to our knowledge of the geohydrology of Saudi Arabia there exist[s] no possibility of ground water pollution by any of the actions described in the claim".

625. Iraq argues that the terrestrial monitoring and assessment programme is the responsibility of the environmental authority in Saudi Arabia. Iraq states that only if and when there is evidence of a threat or damage directly caused by Iraq, will Saudi Arabia be entitled to submit a claim. Moreover, Iraq contends that the claimed costs of the implementation plan are exaggerated.

626. Iraq reiterated these contentions during the oral proceedings.

627. The scientific literature indicates that extensive damage was caused in the territory of Saudi Arabia as a result of the oil fires in Kuwait and the military activities resulting from Iraq's invasion and occupation of Kuwait.

628. Paragraph 34(a) of Governing Council decision 7 provides that a direct loss includes damage, loss or injury suffered as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991".

629. In the opinion of the Panel, it is possible that the desert surface, groundwater, and ecology of the Saudi Arabian desert were damaged as a result of the oil fires and the extensive movements of military personnel and equipment. It is, therefore, appropriate for Saudi Arabia to undertake monitoring and assessment to evaluate the damage and determine the need for, and means of, remediation.

630. The Panel recognizes that some of the damage to the desert ecology of Saudi Arabia may be due to causes other than Iraq's invasion and occupation of Kuwait. However, the possibility that damage could have resulted from other causes does not make it inappropriate for Saudi Arabia to attempt to identify the nature and extent of damage that resulted from Iraq's invasion and occupation of Kuwait. Indeed, this is a major purpose of monitoring and assessment.

631. With regard to Iraq's general objection to monitoring and assessment claims, the Panel reiterates its view, stated in paragraphs 29-30, that proof of environmental damage is not a prerequisite for compensability in accordance with paragraph 35 of Governing Council decision 7.

2. Claim No. 5000437

632. Saudi Arabia seeks compensation in the amount of USD 163,879 for a programme to co-ordinate the various projects for the monitoring and

assessment of impacts on its terrestrial environment resulting from Iraq's invasion and occupation of Kuwait. The programme would review available data, conduct a basic field survey, undertake preliminary fieldwork, and develop the final design of the programme.

633. In the Panel's view, the project is an appropriate component of Saudi Arabia's monitoring and assessment programme. In particular, integration of past research and co-ordination of the activities proposed would help to avoid duplication of effort, ensure efficient use of resources, and enhance the scientific accuracy and utility of the monitoring and assessment activities.

634. The Panel, therefore, finds that the programme constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

635. One of the projects to be co-ordinated by the programme is the travel survey on the loss of desert camping opportunities in claim No. 5000442 (paras. 662-664). As stated below, the Panel finds that that claim does not constitute reasonable monitoring and assessment. For that reason, expenses related to this portion of the claim have been eliminated. The Panel has, therefore, made the necessary adjustments to the estimated cost of this programme.

636. In addition, the costs of field transport, accommodations and air travel have been reduced by applying standard rates. These adjustments reduce the estimated cost to USD 137,573.

637. Accordingly, the Panel recommends compensation in the amount of USD 137,573 for this claim.

3. Claim No. 5000438

638. Saudi Arabia seeks compensation in the amount of USD 4,143,221 for development of a GIS database to facilitate analysis of field observations and data regarding damage to its terrestrial environment resulting from Iraq's invasion and occupation of Kuwait. This would entail updating and expanding Saudi Arabia's existing GIS by creating base maps of all terrestrial study areas, incorporating data, and developing the analytical tools to manage the data.

639. The Panel considers it appropriate for Saudi Arabia to use GIS in its terrestrial monitoring and assessment programme. The Panel notes that Saudi Arabia has indicated that this project is to be integrated with the other GIS projects for which Saudi Arabia seeks compensation.

640. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

641. However, the Panel considers that the database for this project can be completed in one year instead of the two years proposed. This will reduce the costs of labour.

642. Following a review of the cost estimates presented by Saudi Arabia, the Panel has made adjustments as follows:

(a) The amount of labour has been reduced to take account of the decrease in the time for the completion of the database;

(b) The costs of the researcher and field biologist have been eliminated because they are not necessary for the development of a GIS database;

(c) The costs of air travel, accommodation and field transport have been reduced by, inter alia, the application of standard rates; and

(d) The cost of Global Positioning System units and software have been reduced to reflect current market prices.

These adjustments reduce the estimated cost to USD 2,440,130.

643. Accordingly, the Panel recommends compensation in the amount of USD 2,440,130 for this claim.

4. Claim No. 5000439

644. Saudi Arabia seeks compensation in the amount of USD 554,300 to assess risks to human health and ecology from damage to its terrestrial environment caused as a result of Iraq's invasion and occupation of Kuwait. The information obtained would be used to plan remediation programmes for the damaged areas.

645. In the Panel's view, the objectives of the project are appropriate and the methods to be used are internationally recognized.

646. The Panel, therefore, finds that the project constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

647. However, the Panel considers that the assessment should be designed to take advantage of existing and proposed data collection in other studies. In addition, the Panel notes that the human health risk assessment component of this programme duplicates the human health risk assessment proposed in claim No. 5000415 (paras. 684-688). The Panel has, therefore, eliminated expenses related to that component from the costs of this programme.

648. Following a review of the cost estimates presented by Saudi Arabia, the Panel has made adjustments as follows:

(a) The costs related to the human health risk assessment have been eliminated;

(b) The rates for field transport, accommodations and air travel have been reduced by applying standard rates; and

(c) The costs of preparation and production of reports have been reduced to what the Panel considers reasonable.

These adjustments reduce the estimated cost to USD 407,428.

649. Accordingly, the Panel recommends compensation in the amount of USD 407,428 for this claim.

5. Claim No. 5000440

650. Saudi Arabia seeks compensation in the amount of USD 3,781,647 for a project to evaluate remediation and restoration technologies for desert surface, vegetation and groundwater resources in its territory which may have been damaged as a result of Iraq's invasion and occupation of Kuwait. The proposed technology assessment includes the following three components: technology screening; environmental impact analysis; and least-cost analysis.

651. In the view of the Panel, the objectives of the project are appropriate. Assessment of remediation technologies is a useful preliminary step in selecting suitable remediation measures. The proposal to test the performance of selected technologies under various field conditions is justified because no single technology will be appropriate for all damaged areas.

652. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

653. Following a review of the cost estimates presented by Saudi Arabia, the Panel has reduced the costs of field transport, accommodation and air travel by applying standard rates. The reductions bring the estimated cost to USD 3,601,754.

654. Accordingly, the Panel recommends compensation in the amount of USD 3,601,754 for this claim.

655. The Panel urges that the risks of remediation be carefully considered. Intrusive remediation techniques, especially those including excavation, could cause additional disturbance to sensitive desert areas.

6. Claim No. 5000441

656. Saudi Arabia seeks compensation in the amount of USD 6,329,843 for a project that would use field reconnaissance, sampling, and satellite and aerial imaging to determine the extent of damage and natural recovery processes in areas of its territory which may have been adversely affected as a result of Iraq's invasion and occupation of Kuwait. Saudi Arabia states that information about the current state of its environment is necessary to enable it to design remediation that may be needed.

657. The Panel finds that some damage to the desert surface, groundwater, and ecology of the Saudi Arabian desert may have resulted from Iraq's invasion and occupation of Kuwait.

658. Accordingly, the Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

659. Following a review of the project as presented by Saudi Arabia, the Panel suggests certain modifications, details of which are set out in annex XXX to this report.

660. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The costs of analytical tests have been reduced to reflect a decrease in the number of laboratory analyses and the application of standard rates;

(b) The total amount of labour required has been reduced; and

(c) The costs of field transport, accommodation and air travel have been reduced by applying standard rates.

These adjustments reduce the estimated cost to USD 2,840,824.

661. Accordingly, the Panel recommends compensation in the amount of USD 2,840,824 for this claim.

7. Claim No. 5000442

662. Saudi Arabia seeks compensation in the amount of USD 342,496 for a travel cost survey to assess the economic value of the loss of desert recreational camping opportunities that may have resulted from Iraq's invasion and occupation of Kuwait.

663. For the reasons given in relation to claim Nos. 5000365 and 5000412 (paras. 584-587 and 617-619), the Panel finds that the study does not

constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

664. Accordingly, no compensation is recommended for this claim.

D. Public health impacts

1. Common elements

665. Saudi Arabia seeks compensation for an integrated public health monitoring programme to identify and assess the adverse health effects in its territory resulting from Iraq's invasion and occupation of Kuwait. The programme consists of six related components which are reviewed separately as claim Nos. 5000413 to 5000418 in paragraphs 672-706 below.

666. Saudi Arabia alleges that the effects of Iraq's invasion and occupation of Kuwait continue to pose serious long-term health risks to its population. According to Saudi Arabia, these risks result primarily from pollutants that were released into the environment as a consequence of the oil spill and the oil fires, as well as the traumatic stress experienced by the population.

667. Saudi Arabia states that although short-term and medium-term adverse health effects have already been identified, the long-term health effects remain largely unknown. Accordingly, Saudi Arabia proposes to conduct a long-term surveillance programme to identify any such health risks and to select prevention and treatment measures.

668. According to Saudi Arabia, the long-term surveillance programme will co-ordinate the collection of existing and future public health data; identify and monitor persons suspected to have been exposed to the effects of Iraq's invasion and occupation of Kuwait; provide diagnoses of diseases in their primary stages; and study possible causal links between the diseases and environmental pollution. Saudi Arabia contends that failure to conduct such a programme would leave substantial gaps in knowledge concerning the long-term human health effects of Iraq's invasion and occupation of Kuwait, and that this could make it difficult to identify and implement appropriate prevention and treatment measures.

669. In its written response to the claims of Saudi Arabia, Iraq states that no data are available to assess and separate the contribution of airborne particulates generated by the vast number of flares and sand storms in the area.

670. Iraq reiterated these contentions during the oral proceedings.

671. The Panel notes that there is evidence in the scientific literature indicating that some harmful airborne pollutants from the oil fires reached Saudi Arabia. The evidence also suggests that the adverse health effects of airborne pollutants originating from oil fires are distinguishable from those originating from operational flares and natural sources such as

sandstorms. It is possible, therefore, that pollutants from the oil fires have increased the long-term risks of certain diseases in the affected population, including respiratory and pulmonary diseases.

2. Claim No. 5000413

672. Saudi Arabia seeks compensation in the amount of USD 585,960 to develop and co-ordinate the scope of work, specific requirements, schedules and costs of the five separate elements of its programme to monitor the impacts that Iraq's invasion and occupation of Kuwait may have had on public health in its territory.

673. In the Panel's view, such a detailed plan is appropriate for the co-ordination of the various elements of the public health monitoring programme. The Panel, therefore, finds that the plan is an appropriate component of reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

674. However, the Panel considers that the staffing proposed should include the disciplines of epidemiology, medicine, survey methodology, air quality monitoring and modelling, and biostatistics.

675. Following a review of the cost estimates presented by Saudi Arabia, the Panel has made adjustments as follows:

(a) The costs of transportation, travel, accommodation, and daily subsistence allowance have been reduced by, inter alia, the application of standard rates; and

(b) The costs of office, scientific and medical equipment have been eliminated because they should be provided from awards recommended for Saudi Arabia's other public health monitoring claims.

These adjustments reduce the estimated cost to USD 405,633.

676. The Panel, therefore, recommends compensation in the amount of USD 405,633 for this claim.

3. Claim No. 5000414

677. Saudi Arabia seeks compensation in the amount of USD 13,925,945 for a programme to establish and operate a data repository and an exposure registry. According to Saudi Arabia, the data repository would collect and manage documents and data relating to changes in the environment, particularly those that may have impacts on the health of the population, in the periods before and after Iraq's invasion and occupation of Kuwait. It would also maintain the medical records of persons participating in the programme. The exposure registry would identify persons who might have been

affected by Iraq's invasion and occupation of Kuwait, and maintain data on their health status.

678. There are valid reasons for the inclusion of a data repository and an exposure registry in a long-term public health surveillance programme. These facilities provide a central resource useful to epidemiological and clinical researchers because they help to co-ordinate medical data in a central location. This would make it easier to identify diseases and their potential causes.

679. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

680. Following a review of the claim, the Panel suggests certain modifications including, in particular, an increase in the number of households to be surveyed for recording in the exposure registry. Details of the suggested modifications are set out in annex XXXI to this report.

681. Saudi Arabia proposes to construct a new building to house the data repository and exposure registry. The Panel finds that such a facility is necessary for the effectiveness of the programme. The Panel agrees with Saudi Arabia that it would be more cost-effective to construct a new building than to enter into a long-term lease of premises. However, the estimated construction costs presented by Saudi Arabia are excessive and do not take account of the residual value of the building after completion of the programme. The Panel has adjusted the costs accordingly.

682. In addition, the Panel has made adjustments to the cost estimates as follows:

(a) The cost of labour has been reduced by applying standard rates; and

(b) The cost of the surveys has been increased to reflect their expanded scope.

These adjustments reduce the estimated cost to USD 12,590,100.

683. The Panel, therefore, recommends compensation in the amount of USD 12,590,100 for this claim.

4. Claim No. 5000415

684. Saudi Arabia seeks compensation in the amount of USD 1,538,791 for a project to monitor and assess risks to human health as a result of Iraq's invasion and occupation of Kuwait. According to Saudi Arabia, the purpose of the project would be to facilitate prioritization of the potential health risks to focus ongoing environmental remediation efforts on substances or locations that pose the greatest risks to human health. In addition, the

project would provide a foundation for efforts to prevent and treat diseases that may have resulted from Iraq's invasion and occupation of Kuwait.

685. In the Panel's opinion, it is appropriate for Saudi Arabia to undertake such a project, given the large quantities of pollutants that were released into the environment, and the likelihood that the population will continue to be exposed to some of these pollutants through a variety of pathways. Human health risk assessments are commonly used to identify and assess potential health risks and to provide guidance on the design of monitoring programmes and the development of clean-up standards. In the Panel's view, the basic methodology proposed by Saudi Arabia is consistent with standard practices.

686. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

687. Upon a review of the estimated costs presented by Saudi Arabia, the Panel considers that the estimated labour costs are reasonable. However, the Panel has adjusted the costs of travel and accommodation by applying standard rates. These adjustments reduce the estimated cost to USD 1,521,143.

688. The Panel, therefore, recommends compensation in the amount of USD 1,521,143 for this claim.

5. Claim No. 5000416

689. Saudi Arabia seeks compensation in the amount of USD 9,975,047 for a project to determine the long-term health effects on its population that may have resulted from Iraq's invasion and occupation of Kuwait. The project would involve long-term epidemiological studies, and investigations into relationships between invasion-related environmental damage and changes in disease patterns. The project would also provide necessary data for the exposure registry envisaged in claim No. 5000414 (paras. 677-683).

690. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

691. Upon review of the cost estimates presented by Saudi Arabia, the Panel finds that the level of labour proposed exceeds what is necessary for the programme. The Panel has therefore reduced the labour costs by approximately half.

692. One of the components of the programme is a "feasibility studies working seminar" to be held in Saudi Arabia. The cost estimate includes provision for 40 medical experts to travel from the United States to attend the seminar for five days. The Panel does not consider such a seminar to be

necessary, and has therefore eliminated all expenses related to it. Together with the reduction in labour costs, these adjustments reduce the estimated cost to USD 5,106,058.

693. The Panel, therefore, recommends compensation in the amount of USD 5,106,058 for this claim.

6. Claim No. 5000417

694. Saudi Arabia seeks compensation in the amount of USD 28,502,000 for a clinical monitoring programme that would trace the development of clinical symptoms and diseases in persons identified as having suffered adverse health effects caused by pollution resulting from Iraq's invasion and occupation of Kuwait.

695. The monitoring programme would involve the following:

(a) Review of existing clinical studies and data;

(b) Clinical testing of selected persons, including tests for pulmonary function, X-rays, and blood tests;

(c) Comprehensive medical screening and examinations for sections of the population that would be identified by the exposure registry to be established under claim No. 5000414 (paras. 677-683); and

(d) Integration of the data obtained from the tests and screening into Saudi Arabia's existing national health care database.

696. Testing would be carried out on persons identified as having been exposed to pollution resulting from Iraq's invasion and occupation of Kuwait and on a suitable control sample of unexposed persons. The programme is expected to last for at least 40 years. However, the claim is for costs to be incurred during the first five years of the programme.

697. In the view of the Panel, it is likely that some of the adverse health effects will only become apparent after many years. It is, therefore, appropriate for Saudi Arabia to establish and operate a long-term clinical monitoring programme as proposed.

698. The Panel finds that the programme constitutes reasonable monitoring of public health. Consequently, expenses of the programme qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

699. However, the Panel considers that several aspects of the programme should be modified. In particular, the scale of the sampling programme is larger than necessary to achieve the stated objectives and should be reduced. The frequency of medical examinations should also be reduced.

Details of the suggested modifications are set out in annex XXXII to this report.

700. On the basis of these modifications, the Panel has developed a revised estimate of the cost of the programme that it considers to be reasonable to achieve the purpose intended. The revised estimate amounts to USD 7,162,958.

701. The Panel, therefore, recommends compensation in the amount of USD 7,162,958 for this claim.

7. Claim No. 5000418

702. Saudi Arabia seeks compensation in the amount of USD 1,410,000 for a public health survey. The purpose of the survey is to assess the costs of dealing with the increased incidence of various diseases within its population that may have resulted from Iraq's invasion and occupation of Kuwait. According to Saudi Arabia, this programme would enable it to obtain health statistics needed to identify disease prevalence patterns among persons who received treatment in the Saudi Arabian health care system as well as those who may have received treatment in other ways.

703. In the view of the Panel, the objective of the survey is appropriate. The Panel, therefore, finds that the programme constitutes reasonable monitoring of public health, and the expenses qualify for compensation in accordance with paragraphs 35(d) of Governing Council decision 7.

704. Following a review of the project as presented by Saudi Arabia, the Panel suggests certain modifications, details of which are set out in annex XXXIII to this report.

705. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The costs of labour have been reduced by the application of standard rates;

(b) The costs of sundries and contingencies have been reduced; and

(c) The cost of office rental has been reduced to what is considered reasonable.

These adjustments reduce the estimated cost to USD 611,177.

706. The Panel, therefore, recommends compensation in the amount of USD 611,177 for this claim.

Table 9. Recommended amounts for Saudi Arabia's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)	Amount recommended (USD)
5000359	Marine and Coastal	3,533,670	1,861,174
5000360	Marine and Coastal	19,549,743	Transferred
5000361	Marine and Coastal	6,442,735	4,418,360
5000362	Marine and Coastal	1,414,740	nil
5000363	Marine and Coastal	52,337,910	18,142,163
5000364	Marine and Coastal	11,475,985	nil
5000365	Marine and Coastal	693,000	nil
5000408	Marine and Coastal	612,000	567,985
5000409	Marine and Coastal	163,907,795	34,976,723
5000410	Marine and Coastal	1,708,685	nil
5000411	Marine and Coastal	148,470,998	12,793,477
5000412	Marine and Coastal	756,553	nil
5000437	Terrestrial	163,879	137,573
5000438	Terrestrial	4,143,221	2,440,130
5000439	Terrestrial	554,300	407,428
5000440	Terrestrial	3,781,647	3,601,754
5000441	Terrestrial	6,329,843	2,840,824
5000442	Terrestrial	342,496	nil
5000413	Public Health	585,960	405,633
5000414	Public Health	13,925,945	12,590,100
5000415	Public Health	1,538,791	1,521,143
5000416	Public Health	9,975,047	5,106,058
5000417	Public Health	28,502,000	7,162,958
5000418	Public Health	1,410,000	611,177
Total		482,156,943	109,584,660

IX. MONITORING AND ASSESSMENT CLAIMS OF THE SYRIAN ARAB REPUBLIC

Table 10. Syria's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)
5000366	Transport and Dispersion of Air Pollution	97,800
5000367	Transport and Dispersion of Air Pollution	214,000
5000368	Transport and Dispersion of Air Pollution	129,862
5000369	Transport and Dispersion of Air Pollution	914,223
5000370	Cultural Heritage	12,000
5000371	Cultural Heritage	979,000
5000372	Groundwater and Surface Water	815,500
5000443	Terrestrial	416,300
5000444	Terrestrial	651,000
5000419	Public Health	1,394,200
Total		5,623,885

A. Overview

707. Syria submitted claims to monitor and assess damage to the environment and public health due to Iraq's invasion and occupation of Kuwait. It states that Iraq's detonation of Kuwait's oil wells during the final days of Iraq's invasion and occupation of Kuwait resulted in the release of large quantities of smoke into the atmosphere and that, as a result, sulphur dioxide and other harmful gases reached Syrian territory and caused adverse impacts.

708. Syria alleges that the adverse impacts of the oil fires were not restricted to changes in air quality. It claims that the increased concentration of pollutants affected its water, cultural heritage and agricultural resources, polluted its soil, killed its livestock, and adversely affected public health.

709. Iraq, in its written response, questions the basis of Syria's contention that air pollution from the oil fires reached its territory. Iraq contends that, because of the direction of the prevailing winds in the region, the smoke plume from the oil fires extended mostly southward, in the opposite direction from Syria. It also states that Syria has failed to show that it has suffered any direct damage as a result of Iraq's invasion and occupation of Kuwait. Iraq further argues that, because of the composition of the soil in Syria, soil contamination due to acid rain would not be possible.

710. Iraq reiterated these contentions during the oral proceedings.

711. The Panel has taken note of the views of Iraq. However, as previously indicated in paragraphs 29-30, a claimant is not required to prove that it has suffered damage before it can submit a claim for monitoring and assessment of environmental damage and depletion of natural resources. The purpose of monitoring and assessment is to enable the claimant to develop evidence to establish whether environmental damage has occurred, and to quantify the extent of the damage. Accordingly, the Panel does not consider it unreasonable for Syria to attempt to find out if air pollutants from the oil fires in Kuwait reached its territory and had any adverse effects there.

B. Transport and dispersion of air pollution

1. Claim No. 5000366

712. Syria seeks compensation in the amount of USD 97,800 for a preliminary study that was completed in 1997. The purpose of the study was to determine the amount of pollutants that might have been transported to Syria from the oil fires that resulted from Iraq's invasion and occupation of Kuwait. A report on the study was filed with the Commission.

713. There is evidence in the scientific literature that emissions from the oil fires may have reached parts of Syria, albeit infrequently. The evidence suggests that, given the distance between Syria and Kuwait, and the regional wind patterns, the amount of pollutants from the oil fires that might have reached Syrian territory is likely to be small, although that possibility cannot be ruled out completely.

714. Under the circumstances, it was appropriate for Syria to attempt to determine whether pollutants from the oil fires reached its territory. The Panel, therefore, finds that the study constituted reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

715. Syria did not submit sufficient evidence to support the expenses it claimed for the preliminary study.

716. The Panel, therefore, issued Procedural Order No. 5, dated 18 October 2000, in which it requested Syria to provide, inter alia, documentary and other appropriate evidence in support of the claim. In response, Syria submitted a one-and-a-half-page document explaining in general terms the basis for the expenses claimed. No evidence such as contracts, invoices, receipts, salary vouchers, accounting records, time sheets or budgets was provided, and no explanation was given for the failure to provide such evidence.

717. The Panel finds that Syria has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

718. The Panel, therefore, recommends no compensation for this claim.

2. Claim No. 5000367

719. Syria seeks compensation in the amount of USD 214,000 for a project to determine the damage that may have been caused in Syria by airborne pollutants from the oil fires resulting from Iraq's invasion and occupation of Kuwait. Syria proposes to review and analyse weather charts in the Syrian Meteorological Department for the period between February and October 1991 in order to verify the mathematical model used in the preliminary study referred to in claim No. 5000366 (paras. 712-718). The project would also attempt to determine the dates during this period when winds blew from Kuwait toward Syria, and to establish the accompanying formation of atmospheric lows and highs in Syria.

720. There is evidence in the scientific literature that the smoke plume from the oil fires remained one to five kilometres above the ground. The Panel notes, however, that a review of weather charts would only provide information on surface wind patterns. In order to be useful, a project would need to include measurements at higher altitudes. Hence, re-analysis of surface wind patterns is unlikely to achieve the objectives of the project. Information from Syria indicates that it does not have adequate facilities to undertake the necessary higher altitude measurements.

721. The Panel finds that this project does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

722. The Panel, therefore, recommends no compensation for this claim.

3. Claim No. 5000368

723. Syria seeks compensation in the amount of USD 129,862 for a project to map the dispersion over Syria of pollutants which may have been generated by the oil fires that resulted from Iraq's invasion and occupation of Kuwait. A major component of the costs claimed is for the purchase and analysis of satellite images.

724. Syria did not provide sufficient evidence regarding the nature of this project or the basis for the estimated costs. The Panel, therefore, finds that Syria has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

725. Consequently, no compensation is recommended for this claim.

4. Claim No. 5000369

726. Syria seeks compensation in the amount of USD 914,223 for expenses relating to a project on atmospheric modelling. According to Syria, it would participate in the atmospheric modelling project to be undertaken by

Iran (claim No. 5000330, paras. 71-78). Syria intends to use the results of the project to assess the transport and deposition of pollutants from the oil fires on its territory. The amount claimed is stated to include Syria's share of the costs of the Iranian project, the cost of developing Syrian meteorological data for use in the model, and the cost of a computer work station to be purchased by Syria.

727. At the Panel's request, the secretariat asked Syria to provide evidence of its participation in the Iranian project. The information provided to the Panel during its review of this claim was not sufficient either to show that Syria was participating in the Iranian project or to explain the basis on which Syria's alleged share of the costs was calculated.

728. The Panel, therefore, finds that Syria has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

729. Consequently, no compensation is recommended for this claim.

C. Impacts on cultural heritage materials and sites

1. Claim No. 5000370

730. Syria seeks compensation in the amount of USD 12,000 for a preliminary study to assess damage to cultural heritage sites in its territory that may have been caused by pollutants from the oil fires in Kuwait. The study was completed in 1998 and involved field visits by qualified persons to a number of archaeological sites in Syria to determine if the sites had suffered any environmental damage. The study was descriptive in nature; visual observations of the deterioration of structures were noted, but no analytical testing was done.

731. As noted in paragraph 713, there is evidence in the scientific literature that some airborne pollutants from the oil fires may have reached parts of Syria, albeit infrequently. In the Panel's opinion, given the distance between Syria and Kuwait, and the regional wind patterns, the amount of pollutants that might have reached Syrian territory was likely to be small, although the possibility that Syrian cultural heritage sites were affected by pollutants from the oil fires cannot be ruled out completely.

732. The Panel considers that it was appropriate for Syria to attempt to determine whether damage was caused to its cultural heritage sites by pollutants resulting from Iraq's invasion and occupation of Kuwait.

733. The Panel, therefore, finds that the study constituted reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

734. Syria did not provide evidence such as contracts, invoices, receipts, salary vouchers, accounting records, time sheets or budgets to support the

claimed expenses. At the request of the Panel, Syria provided further information. The Panel finds that this additional information is insufficient to demonstrate the circumstances and amount of the expenses claimed.

735. Consequently, the Panel finds that Syria has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

736. The Panel, therefore, recommends no compensation for this claim.

2. Claim No. 5000371

737. Syria seeks compensation in the amount of USD 979,000 for a project to assess damage that may have been caused to cultural heritage sites in Syria by pollutants from the oil fires in Kuwait. According to Syria, the project would consist of field surveys; collection, documentation and analysis of data; and identification of damaged sites, methods of treatment and estimated costs. On the basis of the information obtained, recommendations would be formulated to develop a surveillance system for the regular assessment of rehabilitation measures.

738. The Panel finds that the project is an appropriate attempt to determine whether pollutants from the oil fires had any impact on cultural heritage sites in Syria. Thus it constitutes reasonable monitoring and assessment, and the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

739. Following a review of the project as presented by Syria, the Panel suggests certain modifications, details of which are set out in annex XXXIV to this report.

740. Following a review of the cost estimate presented by Syria, the Panel has developed a revised cost estimate for a project of reduced scope that it considers reasonable. This involves a substantial reduction in labour costs. The revised estimate amounts to USD 250,000.

741. Accordingly, the Panel recommends compensation in the amount of USD 250,000 for this claim.

D. Impacts on groundwater and surface water

Claim No. 5000372

742. Syria seeks compensation in the amount of USD 815,500 for a project to assess the pollution of surface water and groundwater in its territory that may have been caused by pollutants from the oil fires that resulted from Iraq's invasion and occupation of Kuwait. The purpose of the study would be to investigate and verify the extent and impact on surface water and

groundwater of pollution from the oil fires, including acidification caused by acid rain precursors (nitrogen oxides and sulphur dioxide).

743. As previously noted, pollutants from the oil fires may have reached parts of Syria, albeit infrequently. In the view of the Panel, given the distance between Syria and Kuwait, and the regional wind patterns, the amount of pollutants from the oil fires in Kuwait that might have reached Syrian territory is likely to be small. However, although the possibility that the oil fires affected groundwater in Syria is very low, it cannot be ruled out completely. It is, therefore, appropriate for Syria to attempt to ascertain whether any pollutants reached its territory and, if so, whether they caused any damage.

744. The Panel finds that the project constitutes reasonable monitoring and assessment. Consequently, the expenses qualify for compensation in accordance with paragraph 35(c) of Governing Council decision 7.

745. Following a review of the project as presented by Syria, the Panel suggests certain modifications, details of which are set out in annex XXXV to this report.

746. Taking account of the suggested modifications, the Panel has made adjustments as follows:

(a) The total amount of labour required has been reduced to take account of the reduced scope of the project;

(b) The costs of computers and software have been reduced; and

(c) The cost of apparatus to measure heavy metals has been eliminated.

These adjustments reduce the estimated cost to USD 159,600.

747. The Panel, therefore, recommends compensation in the amount of USD 159,600 for this claim.

E. Impacts on the terrestrial environment

1. Claim No. 5000443

748. Syria seeks compensation in the amount of USD 416,300 for a study to determine the effects of the oil fires in Kuwait on Syrian livestock and to estimate the costs of any damage that may have occurred. According to Syria, air pollution from the oil fires spread to Syria from February to November 1991, leading to acid rain, the build-up of residue in shrubs and grasses, and the long-term bioaccumulation of pollutants in shrubs and grasses. Syria alleges that sheep mortality increased as a result of grazing on contaminated grassland and drinking contaminated water.

749. Syria proposes to determine the size of the sheep population before and after the period during which the oil fires burned, define the contaminated areas and the number of sheep in these areas, identify the effects of contaminants on natural rangelands and on rain water, investigate cases of disease in sheep and their treatment, and develop an economic and statistical analysis of any damage identified.

750. Iraq, in its written response, argues that Syria did not provide substantial evidence of any harm detected in livestock.

751. As previously noted (paras. 29-30), the Panel does not consider that proof of environmental damage is a prerequisite for compensability.

752. However, the Panel notes that Syria has failed to provide details regarding the proposed methodology and it has not indicated how the study would link sheep mortality to air pollution resulting from Iraq's invasion and occupation of Kuwait.

753. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

754. Accordingly, no compensation is recommended for this claim.

2. Claim No. 5000444

755. Syria seeks compensation in the amount of USD 651,000 for a study to determine the effect of the oil fires in Kuwait on Syria's forest resources, and to estimate the costs of any damage that may have occurred. According to Syria, the air pollution from the oil fires damaged a large number of young seedlings and dried pasture shrubs.

756. Syria proposes to survey the areas suspected to have been damaged by pollution from the oil fires, assess the age and types of trees in those areas before and after 1991, and identify specific causes of damage.

757. Iraq, in its written response, argues that Syria did not provide substantial evidence of any harm detected in its forest sector.

758. As previously noted (paras. 29-30), the Panel does not consider that proof of environmental damage is a prerequisite for compensability.

759. However, the Panel notes that Syria has not provided any details of the proposed methodology; nor has it indicated how the study would differentiate vegetation contaminated as a result of Iraq's invasion and occupation of Kuwait from that contaminated by other sources.

760. The Panel finds that the study does not constitute reasonable monitoring and assessment for the purposes of paragraph 35(c) of Governing Council decision 7.

761. Accordingly, no compensation is recommended for this claim.

F. Public health impacts

Claim No. 5000419

762. Syria seeks compensation in the amount of USD 1,394,200 for a project to assess the state of health of its population before, during and after the oil fires in Kuwait. According to Syria, air pollution from the oil fires spread to Syria from February to November 1991, with adverse impacts on public health.

763. Syria proposes to examine various health indicators, focusing on birth rates, mortality, fertility, mortality of children under one year and under five years of age as well as on diseases and deaths classified by the tenth International Classification of Diseases (International Statistical Classification of Diseases and Related Health Problems, 10th revision, vol. 3 (Geneva, WHO, 1992-c1994)). Data would be collected from hospitals and health centres across Syria. A study of each indicator would be performed in order to detect any statistically significant increases in these indicators that might be attributed to Iraq's invasion and occupation of Kuwait.

764. The evidence in the scientific literature indicates that prevailing winds in the region generally move from Syria toward Kuwait, and that conditions conducive to the airborne transport of pollutants from Kuwait to Syria occur infrequently. Nevertheless, the Panel accepts that the possibility that some pollutants from the oil fires reached parts of Syria cannot be ruled out completely.

765. In the view of the Panel, the project is based on appropriate objectives, and constitutes reasonable monitoring of public health. Consequently, the expenses qualify for compensation in accordance with paragraph 35(d) of Governing Council decision 7.

766. However, the Panel has some concerns regarding the selection and number of health indicators, the scope of the project and its duration. To address these concerns it suggests certain modifications, details of which are set out in annex XXXVI to this report.

767. In addition, the Panel has made adjustments to the cost estimate as follows:

(a) The total amount of labour required has been reduced;

(b) The costs of transportation and equipment have been reduced; and

(c) The costs of proposed visits by the members of the project team to neighbouring countries have been eliminated because such visits are not necessary.

The revised estimate amounts to USD 264,600.

768. The Panel, therefore, recommends compensation in the amount of USD 264,600 for this claim.

Table 11. Recommended amounts for Syria's monitoring and assessment claims

Claim number	Subject matter	Amount claimed (USD)	Amount recommended (USD)
5000366	Transport and Dispersion of Air Pollution	97,800	nil
5000367	Transport and Dispersion of Air Pollution	214,000	nil
5000368	Transport and Dispersion of Air Pollution	129,862	nil
5000369	Transport and Dispersion of Air Pollution	914,223	nil
5000370	Cultural Heritage	12,000	nil
5000371	Cultural Heritage	979,000	250,000
5000372	Groundwater and Surface Water	815,500	159,600
5000443	Terrestrial	416,300	nil
5000444	Terrestrial	651,000	nil
5000419	Public Health	1,394,200	264,600
Total		5,623,885	674,200

X. MONITORING AND ASSESSMENT CLAIM OF THE REPUBLIC OF TURKEY

Table 12. Turkey's monitoring and assessment claim

Claim number	Subject matter	Amount claimed (USD)
5000445	Departure of persons from Iraq or Kuwait	3,770,300
Total		3,770,300

Claim No. 5000445

769. Turkey seeks compensation in the amount of USD 3,770,300 for a study to determine the effects on its forest resources of the refugees who entered Turkey as a result of Iraq's invasion and occupation of Kuwait. Specifically, Turkey proposes to study the changes in carbon emission and storing, the soil losses caused by erosion, the changes in biodiversity, and the socio-economic losses resulting from large quantities of wood having been cut down by the refugees.

770. Turkey alleges that 200,000 refugees entered Turkey during Iraq's invasion and occupation of Kuwait in early spring of 1991. Because of the cold weather conditions, the refugees cut down trees for heating fuel, and thereby damaged the forests.

771. The Panel notes that, pursuant to paragraph 34(b) of Governing Council decision 7, losses resulting from the departure of persons from Iraq or Kuwait are compensable if the departures occurred during the period 2 August 1990 to 2 March 1991.

772. Turkey has provided inadequate evidence to establish the dates of departure of the refugees, the countries from which they departed, or the duration of their stay. Therefore, the Panel is unable to determine whether any losses suffered by Turkey as a result of the presence of the refugees would qualify as direct loss resulting from Iraq's invasion and occupation of Kuwait.

773. The Panel finds that Turkey has failed to meet the evidentiary requirements for compensation specified in article 35(3) of the Rules and Governing Council decision 46.

774. The Panel, therefore, recommends no compensation for this claim.

Table 13. Recommended amounts for Turkey's monitoring and assessment claim

Claim number	Subject matter	Amount claimed (USD)	Amount recommended (USD)
5000445	Departure of persons from Iraq or Kuwait	3,770,300	nil
Total		3,770,300	nil

XI. RELATED ISSUES

A. Currency exchange rate

775. The Commission issues awards in United States dollars. The majority of claims were filed in United States dollars, and therefore these costs do not raise currency exchange rate issues. However, some items of expenditure in some of the claims were presented in other currencies and converted into United States dollars at specified rates. In the course of its review, the Panel determined whether the exchange rates used by the Claimants were reasonable approximations of the applicable rates in the United Nations Monthly Bulletin of Statistics.

776. The Panel accepted the exchange rates used by the Claimants, except where fluctuations in exchange rates would have resulted in an overstatement of the value of the claim. In such cases, the Panel applied the rates in the United Nations Monthly Bulletin of Statistics.

B. Interest

777. Governing Council decision 16 provides that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award" (S/AC.26/1992/16, para. 1). It also provides that the Governing Council will consider the methods of calculation and payment of interest at the appropriate time, and that interest will be paid after the principal amount of awards. Accordingly, the Panel must determine the date from which interest will run, where relevant.

778. The majority of the monitoring and assessment claims are for financial expenditures that have not yet been incurred. In such cases, no interest is due and, accordingly, no date of loss has been indicated. With respect to completed studies, the Panel has selected the mid-point of the period during which expenses were incurred as the date of loss.

XII. SUMMARY OF RECOMMENDATIONS

779. Based on the foregoing, the Panel recommends that the amounts set out in table 14 below be paid in respect of the claims included in the first instalment of "F4" claims.

Table 14. Summary of recommended awards for monitoring and assessment claims

Country	Total number of claims	Amount claimed (USD)	Amount recommended (USD)
Iran	40	42,951,383	17,007,070
Jordan	10	12,488,949	7,060,625
Kuwait	22	460,421,114	108,908,412
Saudi Arabia	24	482,156,943	109,584,660
Syria	10	5,623,885	674,200
Turkey	1	3,770,300	nil
Total	107	1,007,412,574	243,234,967

Geneva, 28 March 2001

(Signed) Thomas A. Mensah
Chairman

(Signed) José R. Allen
Commissioner

(Signed) Peter H. Sand
Commissioner

TECHNICAL ANNEXES TO THE REPORT ON THE FIRST INSTALMENT OF "F4" CLAIMS

Introduction

1. In the course of its review of claims for monitoring and assessment of environmental damage and depletion of natural resources, the Panel identified possible modifications in the design and methodology of some of the monitoring and assessment activities proposed. Where the Panel found that modifications in the technical content of an activity, or the extent of work proposed, would be appropriate in the light of the stated objectives of the claim, it has so indicated in its comments on the claim concerned. As noted in paragraph 47 of the report, the specific modifications suggested are set out in the respective annexes.

2. The purpose of these modifications is to improve the technical quality of the tasks to be undertaken, to enhance the value of the results to be produced, and to increase the overall cost-effectiveness of the monitoring and assessment activities. The Panel recognizes that, in the course of practical implementation of monitoring and assessment activities, further variations are likely to be required to achieve the objectives stated in the claims. Where such variations affect the implementation of an activity for which compensation has been awarded, the Panel recommends that the claimant inform the Commission of the reasons for variation.

3. The specific modifications suggested in the annexes also address a number of common concerns that apply to all or most of the monitoring and assessment activities proposed by Claimants. These common concerns may be summarized as follows:

A. Distinguishing invasion-related impacts from other factors

4. Distinguishing the various factors that may have contributed to observed impacts on environmental quality, natural resources and human health is an important but very difficult task, given the passage of time, ongoing pollution inputs, natural variability in the environment of the region, and other possible causes of environmental change. In many cases, well-established techniques exist to assist in determining whether, and to what extent, observed impacts are attributable to Iraq's invasion and occupation of Kuwait, as opposed to other causal factors.

5. Where available, data from the period prior to Iraq's invasion and occupation of Kuwait should be taken into account in the selection of the most suitable sampling sites or populations, and in evaluating the significance of post-invasion information.

6. Wherever feasible, data should be collected and analysed from sites or populations that were not affected by Iraq's invasion and occupation of Kuwait but are otherwise similar or comparable to sample sites or populations in the impact area.

7. Certain types of chemical analyses (e.g. gas chromatography/mass spectrometry) may generate information that can help to identify (fingerprint) or rule out specific sources as the causes of observed damage or pollutants.

8. Analyses of spatial and temporal patterns in pollution may generate information that can improve an understanding of the relative, or proportionate, importance of various pollution sources.

B. Consideration of published literature

9. There is substantial information in the published scientific and technical literature on the issues of damage assessment, risk assessment, remediation and restoration options that need to be examined in many of the proposed monitoring and assessment activities. Claimants should endeavour to make the fullest use of the techniques, methodologies and models recognized in the literature, and they should carefully consider the results of similar monitoring and research conducted by other investigators when evaluating their findings.

C. Use of tiered (iterative) sampling and testing

10. For proposed monitoring and assessment activities with significant sampling components, initial sampling and analysis should be undertaken to evaluate a relatively broad set of samples, using "simple" tests capable of determining the presence or absence of significant pollution impacts. Once these initial screening evaluations have been performed, subsequent sampling efforts, and more "complex" (and costly) analytical testing of the samples obtained, should be reserved for those impacted areas or populations where further testing appears most likely to assist in the identification of damage and causes, estimation of recovery possibilities, and choice of remediation options.

D. Analysis of environmental impacts of remediation

11. Claimants should take special care to analyse the potentially negative environmental impacts of remediation activities. Some remediation techniques have significant potential for further damaging ecological systems (e.g. using gravel to stabilize desert pavements). All monitoring and assessment studies should provide thorough analyses of the potential ecological effects of the remediation activity itself.

E. Use of standard rates

12. In the calculation of reasonable labour and equipment costs, and the costs of related items such as travel, accommodations etc., standard local rates should normally be applied, except where the use of foreign personnel or equipment is justified. Standard rates are also available for foreign personnel and equipment and should be used wherever applicable. Cost

calculations should also take into account possible savings in terms of multiple use and residual value of facilities.

F. Co-ordination of related activities

13. In many cases, the Claimants could improve their monitoring and assessment activities (and reduce costs) by co-ordinating sampling designs, sharing data and jointly evaluating information obtained from other related activities undertaken by the same Claimant or, in some cases, by other Claimants. Claims for which such co-ordination appears possible and desirable have been identified in this Panel report. Co-ordination may involve, in particular, joint use of personnel and technical facilities, mutual alignment of timetables and areas and subjects for sampling and analysis, wherever feasible.

Annex I

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000330 (IRAN)
(paragraphs 71-78)

1. To succeed within a one to two-year period, the project should make use of existing models, data and research knowledge. Excellent meso-scale models already exist and the work of several research groups has helped to refine these models and make them more suitable to predict the movement of the smoke from the fires in Kuwait.

2. The data collection effort should concentrate primarily on the search for data that would be useful for verifying the results of the modelling, such as data on "black rain" or "black snow" in Iran before, during and after the oil fires in Kuwait.

3. Consideration should be given to conducting direct measurements of black carbon in order to evaluate the stratigraphy and chemical composition of layers found in core samples of soils so as to identify airborne pollutants that may have been deposited before, during and after the oil fires in Kuwait. See, for example, M. Garstang and others, "Atmospheric transport of particulate and gaseous products of fires", Sediment Records of Biomass Burning and Global Change, (James S. Clark and others, eds.,)(NATO ASI Series,) vol. 1, p. 51 (Berlin, Heidelberg, Springer Verlag, 1977).

4. Two senior scientists and one programmer from an established modelling group, working full time, could complete the project with assistance from a research assistant and clerical support. One of the senior scientists should serve as project manager and spend 33 per cent of his/her time on that function.

5. While no new computer hardware or software will be required, because all established modelling groups already have the needed equipment, funding will be needed for the purchase of mainframe computer time for model refinement and operating runs.

6. The funds proposed to cover labour costs for the development of meteorological data, and for a data/information specialist, should be allocated instead to comprehensive efforts to identify and utilize any data in Iran on the composition of black rain, black snow or other forms of pollution from the oil fires in Kuwait, that would be useful to verify the predictions of any model.

Annex II

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000446 (IRAN)
(paragraphs 84-90)

1. The proposed studies should endeavour to differentiate damage caused by background pollution, combined with on-going processes such as general weathering, corrosion and degradation, from damage resulting from pollution from the oil fires in Kuwait. There are five general approaches scientists may use to estimate incremental damage to cultural artefacts: (1) before-and-after comparisons; (2) stratigraphic measurements; (3) fingerprinting studies; (4) comparisons of affected artefacts to unaffected control artefacts; and (5) mathematical damage functions. Of these approaches, before-and-after studies and fingerprinting are most likely to provide useful information for evaluating damage or loss attributable to the effects of Iraq's invasion and occupation of Kuwait.

2. If significant soiling is found on the artefacts that can be attributed to the oil fires in Kuwait, the development of cleaning instructions may be appropriate. To develop appropriate cleaning methods, "test" cleanings should be performed to identify methods that are both effective and safe to the artefact.

3. Each of the studies can be completed within a period of 24 months.

4. The amount of labour should be reduced by approximately 50 per cent.

5. The number of analytical tests should be reduced by 80 per cent, which will be sufficient to characterize the condition of the artefacts and determine whether a fingerprint can be established.

6. Considering that several of the sites concerned are listed as world heritage sites under the 1972 World Heritage Convention (Convention for the Protection of the World Cultural and Natural Heritage, United Nations Treaty Series, vol. 1037, No. 15511, p. 151), monitoring and assessment activities for these sites should proceed in consultation and coordination with the World Heritage Centre of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Annex III

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000447 (IRAN)
(paragraphs 91-98)

1. As described in annex II, there are five general approaches scientists could use to estimate incremental damage to cultural artefacts. Of those approaches, before-and-after studies and fingerprinting are most likely to provide useful information for evaluating damage or loss that may have resulted from Iraq's invasion and occupation of Kuwait.

2. If significant soiling is found on the artefacts that can be attributed to the oil fires in Kuwait, the development of cleaning instructions may be appropriate. To develop appropriate cleaning methods, "test" cleanings should be performed to identify the methods that are both effective and safe to the artefacts.

3. The scope of work should be reduced by 50 per cent, which will be sufficient to produce useful results in relation to indoor materials.

4. Each of the studies can be completed within a period of 24 months.

5. The amount of labour should be reduced by approximately 70 per cent.

6. The number of analytical tests should be reduced by 80 per cent, which will be sufficient to characterize the condition of the artefacts and determine whether a fingerprint can be established.

Annex IV

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000343 (IRAN)
(paragraphs 106-112)

1. The proposed Geographic Information System framework should

   (a) Consider areas known to be exposed to soot; and

   (b) Incorporate principal geological and hydrogeological factors which would affect transport of airborne pollutants into underlying aquifers (e.g. hydraulic conductivity and depth of aquifer).

Consideration of these factors in the initial stages of the investigation would help to pinpoint the areas most likely to be at risk to groundwater pollution.

2. In the absence of baseline data, measuring incremental groundwater pollution from the oil fires would require either

   (a) Selection of comparable control aquifers (i.e. unaffected groundwater resources) to compare with areas affected by oil fires; or

   (b) A method such as chemical fingerprinting to link pollutants in groundwater to the oil well fires.

3. The project can be completed within a period of 12 months. This would result in a reduction of 60 per cent in the number of person-months required.

Annex V

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000347 (IRAN)
(paragraphs 113-118)

1. The project should evaluate measures, such as the per cent cover of epibiota on prop roots, mobile biota living in the prop root area, observations of bark fissuring, epithelial scarring, lenticel expansion, leaf deformities and chlorosis, and propagule stunting or bending. These indices could provide useful information about forest recovery potential.

2. Sediment samples should be collected in study plots to interpret revegetation results. Submission of plot-specific sediment cores collected by researchers for oil fingerprinting analysis (using, for example, gas chromatography/mass spectrometry ("GC/MS")) may provide an indication of the degree to which oil from Kuwait is responsible for observed effects on mangroves. This approach might allow researchers to correlate revegetation potential and metal uptake with varying degrees of exposure to oil from Kuwait and atmospheric deposition.

3. The researcher level of effort can be reduced by 50 per cent. Further, all the work involving electrophoresis can be eliminated without prejudice to the objectives of the project. This would result in a reduction of the effort at the assistant researcher level by 10 to 15 per cent.

4. An additional set of sediment samples (i.e., one sample composited from each of the 100 plots) should be selected for petroleum fingerprinting analysis using GC/MS to confirm exposure to oil from Kuwait.

5. Monitoring deposition of airborne pollutants should be co-ordinated with other projects dealing with the long-range transport of air pollutants from the oil fires (in particular, claim No. 5000330), to ensure compatibility of site selection and timing.

Annex VI

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000349 (IRAN)
(paragraphs 119-125)

1. The project should take both sediment deposition rates and physical and biological mixing of sediments into account to determine the time of pollutant deposition. Sedimentation rates in the intertidal zone are not constant in time or space, so each site will be different, based on the type of intertidal habitat (e.g. beach, mudflat, sand flat, mangrove forest). It is likely that substantial variations in the sedimentation rate will occur within the large project area (i.e., from Khuzestan Province to the Strait of Hormuz). The project should attempt to account for these differences in sedimentation rates and should also consider the impacts of physical and biological mixing. As a result, increasing the size of the core subsamples (every five centimetres rather than every one-two centimetres as proposed) should be considered. Due to the physical and biological mixing that could have occurred in the marine environments proposed for sampling, using one-two centimetres core subsamples may not improve the project's ability to assign contamination to time periods and may in fact lead to erroneous conclusions about the age of the sediment layers.

2. The project should use chemical fingerprinting analyses using gas chromatography/mass spectrometry ("GC/MS") and atomic absorption spectrophotometry techniques in order to investigate possible links between potential changes in microfaunal community structure and pollution resulting from Iraq's invasion and occupation of Kuwait. Evaluation of the ratios of trace metal concentrations can provide some indication of the source of oil pollution (and provide further information about the cause of any observed sediment toxicity). Total petroleum hydrocarbon tests will not help to distinguish the sources of oil. Correctly conducted, GC/MS analysis may enhance the project's ability to differentiate between the sources of petroleum hydrocarbons in intertidal sediments. In order to link changes in microfaunal community structure to chemical exposure, fingerprinting analyses should be conducted in the same locations as those used for microfaunal community structure analyses.

3. The number of subsamples for microfauna and chemical analyses should be reduced. The amount of work at the researcher level can thus be reduced by approximately 35 per cent, and at the assistant researcher level by approximately 50 per cent.

4. The proposed analytical tests should be replaced by GC/MS and metals analysis for the 350 GC/MS and metals subsamples (i.e., 35 cores x 10 subsamples per core).

Annex VII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000350 (IRAN)

(paragraphs 126-131)

1. Mass spectrometry should be used in conjunction with the proposed gas chromatography work to obtain more accurate hydrocarbon characterization and to help identify the source of any petroleum hydrocarbons found in the sediment cores.

2. The impacts of physical and biological mixing should be considered in the evaluation of sediment samples. For example, increasing the size of the core subsamples (every five centimetres rather than every one-two centimetres as proposed) should be considered. Due to the physical and biological mixing that has probably occurred in the marine environments proposed for sampling, using one-two centimetres core subsamples may not improve the study's ability to assign contamination to time periods and/or lead to erroneous conclusions about the age of the sediment layers.

3. The project should involve the collection of core samples from the coral reefs themselves. Layers within coral cores can be fingerprinted for petroleum hydrocarbons, and layers can be dated using the corals' growth rings. This approach might identify the source(s) of hydrocarbons to which the corals were exposed at different times. If coral growth is also measured using the rings, it might also be possible to detect growth changes associated with exposure to petroleum hydrocarbons.

4. In selecting control sites, careful thought should be given both to the sites' ability to provide information on potential confounding factors and the requirements of statistical validity.

5. For the project to generate useful information on the relative success of restoration techniques, at least one year, and preferably several years, should be allotted for monitoring and evaluation of the sites. For this purpose, the budget proposed for an "advisor" (20 person-months), could be re-allocated to the design and implementation of a longer-term study that will generate useful data to inform future restoration decisions. The "advisor" could, for example, spend nine months selecting the sites and establishing the restoration projects, revisit and monitor the sites for two months per year for the following four years, and finally spend three months writing a final report on the project results.

6. The amount of work for sediment analyses should be increased to allow for gas chromatography/mass spectrometry analyses in addition to the proposed nickel and vanadium analyses for each of the sediment subsamples.

Annex VIII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000351 (IRAN)
(paragraphs 132-137)

1. Accurate characterization of sedimentation rates is essential in dating sediment core layers. In addition the impacts of local physical and biological mixing should be carefully considered. Ignoring bioturbation can result in substantial errors in dating core layers. For these reasons, the study should increase the size of the core subsamples (every five centimetres rather than every one-two centimetres as proposed). Due to the physical and biological mixing that has probably occurred in the marine environments proposed for sampling, using one-two centimetres core subsamples may not improve the study's ability to assign contamination to time periods and may in fact lead to erroneous conclusions about the age of the sediment layers

2. Because accurately characterizing the sedimentation rate and sediment mixing is likely to be difficult, the project should be focused on the proposed atomic absorption spectrophotometry work and on gas chromatography/mass spectrometry ("GC/MS") analyses. In particular, using ultraviolet fluorescence to evaluate petroleum hydrocarbon concentrations in sediment will not provide adequate resolution to determine the source of the oil pollution. Instead, GC/MS may enhance the project's ability to discriminate between different sources of oil pollution.

3. The level of work for all labour categories can be reduced by 79 per cent as follows:

   (a) Researcher staff level: one person-month for the field effort, four person-months for laboratory analyses, and six person-months for report preparation.

   (b) Advisor staff level: one person-month for the field effort and three person-months for report preparation.

   (c) Assistant researcher staff level: two person-months for laboratory analyses and six person-months for report preparation.

   (d) Technical staff: two person-months for field work and four person-months for laboratory analyses.

   (e) Driver: two person-months are needed for field work and two person-months for the laboratory analyses.

Annex IX

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000352 (IRAN)
(paragraphs 138-144)

1. The plot size should be reduced from 300 square metres to 100 square metres per plot. In addition, the proposed level of effort to be devoted to seedling production, seed collection, and wild seedling collection should be increased because it is far too low given the project's scope. When reforesting mangroves, a minimum of one plant per square metre is recommended. The submitted claim specifies producing only 800 seedlings in a nursery, planting 800 seeds, and collecting 450 wild seedlings. Even if a three metre distance were used as proposed, the project's plan would require far more plant material than is currently envisaged. Reducing the plot size and acquiring additional seedling/seed stock will address these issues.

2. Tissue culture should be eliminated from the proposed reforestation methodologies because it is an inappropriate technique in the context of this work. Tissue culture in mangroves is at an experimental stage and cannot reasonably be used for reforestation-scale purposes.

3. Mangrove reforestation success monitoring requires several years due to mangroves' slow maturation time. It would, therefore, be preferable for the project to continue for a longer period (e.g. at least three years). A longer observation period would be more likely to represent accurately the relative success of the different techniques and the effects, if any, of local oil pollution on reforestation success. This could be accomplished within the proposed budget by monitoring the reforested mangroves every three months over a period of three years instead of every month over a period of one year.

4. In the selection of control sites, the inclusion of four 100-square-metre plots (replicates) of all three reforestation methodologies at each intertidal level should be considered. This would produce a total of 36 reference plots per site.

5. An appropriate sediment sampling plan would include the analysis of triplicate sediment samples from all 36 plots at both sites, plus triplicate samples from the three reference plots from each of the two sites, for a total of 234 samples.

6. The level of effort for the researcher and assistant researcher positions can be reduced by 25 per cent and 70 per cent, respectively, to take account of the elimination of the tissue culture part of the project. The level of effort of technical staff should be increased from 40 months

to 47 months, due to the increase in the number of plants to be reforested.

Annex X

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000344 (IRAN)
(paragraphs 145-151)

1. In selecting numbers and locations of study sites, careful thought should be given to the requirements of statistical validity, having regard especially to the goal of the project which is to characterize community recovery in the estimated 10,000 hectare area, and to the numerous microhabitat and oil exposure variations common in wetland areas that have been affected by oil spills.

2. Additional measures of recovery to those proposed include measuring the above-ground biomass (a measure of production) and systematic observations of marsh fauna in order to understand recovery of this important element of a marsh ecosystem. Although not essential, these additional measures of marsh recovery would help the study to gain a broader understanding of the actual recovery of Shadegan Wetland.

3. The project should identify and use suitable control plots and conduct additional fingerprinting of soil samples in the study and control areas. These actions might improve the project's ability to link any pollutants to Iraq's invasion and occupation of Kuwait and would reduce the probability that other confounding factors were responsible for any observed impacts.

4. The level of effort for the researcher can be reduced by 40 per cent. In addition, as indicated by the claimant, the level of effort for the assistant researchers and technical staff can be reduced by approximately 20 per cent since only 60-65 of the original 100 plots have been studied during the greater part of the period of this project. The level of effort for secretaries can be reduced by 40 per cent.

5. The proposed petroleum hydrocarbon analysis can be eliminated altogether and replaced by one set of sediment samples (i.e., one sample composited from each of 65 plots) for petroleum fingerprinting analysis using gas chromatography/mass spectrometry to obtain information that may help ascertain the source of oil pollution.

Annex XI

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000346 (IRAN)

(paragraphs 156-162)

1. Species diversity and abundance analyses should be performed on the planktonic, benthic fauna, and demersal fish samples. (For benthic communities, abundance and species diversity metrics, including the absence or presence of vulnerable species, can be indicative of sediment contamination, since these organisms are in direct contact with the sediment.)

2. In addition, heavy metal and petroleum hydrocarbon fingerprinting analyses should be performed on the benthic faunal samples. Approximately ten specimens of a selected benthic faunal species should be pooled for analyses from each sampling station for each sampling period.

3. A more explicit identification of baseline data, in terms of the actual data sets, sampling locations, seasons/times, and methodologies used to evaluate the comparability of this data with the proposed data collection effort should be undertaken. In addition, the project should consider the known and predicted behaviour of the oil from the oil spill in Kuwait, taking into account water circulation patterns and other factors (e.g. oil residence times) influencing the transport and fate of oil. While it is acknowledged that less baseline and post-1991 environmental data are available for Iran than other Gulf States, some published data are available and should be consulted (e.g. Regional Report of the State of the Marine Environment, ROPME/GC-9/002 (1999)).

4. Sampling in unaffected (control) areas should also be considered, as sites that have not been affected by oil can be important for determining the impacts of confounding factors.

5. The duration of the project should be increased to address the question of the regeneration rate of the fishery resources. To adequately study the regeneration of a population, the organism or system must be evaluated over a sufficient time frame. Substantial inter-annual variability in fish stocks and benthic faunal populations is a common occurrence. In addition, zooplankton and phytoplankton abundance may vary daily. An alternative to the proposed approach that would provide more information on regeneration rates is to spread the sampling over two and a half years. Under such a plan, sampling would occur only twice a year for a total of five sampling periods. While providing some seasonal variability data, this approach may also provide a better understanding of inter-year regeneration of selected species.

6. The level of effort for the assistant researcher staff can be reduced by approximately 50 per cent.

Annex XII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000348 (IRAN)

(paragraphs 163-168)

1. A statistically valid number of unaffected (control) sites should be established to minimize potential confounding factors that may have affected the marine ecosystem. These control sites might also help to define natural variability. For example, other Iranian monitoring and assessment marine projects propose to use the Strait of Hormuz as a reference site, as oil pollution from Iraq's invasion and occupation of Kuwait did not significantly penetrate that area.

2. Co-location of the sediment sampling sites, the fish specimen collection sites, the invertebrate collection sites, and the tarball collection sites would provide useful data for the interpretation of pollution sources, pathways, and potential contamination of food sources.

3. The proposed sediment sampling should be adjusted to include collection of at least two additional reference samples, thus increasing the number of sampling sites from 18 to 20.

4. Due to the physical and biological mixing that occurs in the marine environments proposed for sampling, using three centimetres core subsamples may not make it possible to attribute pollution to time periods and/or may lead to erroneous conclusions about the age of the sediment layers. For these reasons, the size of sediment subsamples should be increased (to five centimetres).

5. The number of tissues (per fish) to be analysed should be considerably reduced. Specifically, the fish liver, skin, and muscle are commonly analysed. The liver of fish species is a primary site for detoxification of hydrocarbons and other pollutants such as heavy metals. Ideally, collection of extracts of bile from the liver at the time of species collection would provide insight into the presence of petroleum metabolites, indicating exposure to petroleum compounds. In addition, pollutants can potentially accumulate in the skin of fish, making this tissue a good indicator of pollutant exposure. Also, the muscle tissue of the fish should be examined because consumption by humans and piscivorous wildlife may lead to health risks. The analysis of gills, gonads, kidney, gastrointestinal tract, and eye tissue should be eliminated because it may only provide a minimal increase in information on exposure of fish to pollutants.

6. Samples of oil collected at the time of Iraq's invasion and occupation of Kuwait were not stored properly. The oil may have undergone

biodegradation or other abiotic changes that could create a false fingerprint when compared to hydrocarbon concentrations detected in sediment and fish samples.

7. When conducting the laboratory bioassays, careful thought should be given to how best to simulate the field conditions present during Iraq's invasion and occupation of Kuwait. This process should include both devoting thought to the issue of determining exactly what those conditions were, and then taking care to ensure that the laboratory conditions (especially in flow-through experiments) approximate the relevant field conditions as closely as possible.

8. Appropriate quality assurance and quality control protocols for sample collection and processing should be established. Among other goals, these protocols should minimize the probability that collected samples are further contaminated in the field prior to proper storage and analysis.

9. Water samples should be collected and the dissolved constituents should be measured (for both hydrocarbons and trace metals) during execution of the laboratory toxicity studies. Previously conducted toxicity studies were flawed by the use of nominal concentrations (calculated based on the amount of oil added to a specific volume of water) rather than actual measured hydrocarbon concentrations. Understanding the limitations of the toxicity testing protocols and taking precautions against these limitations could increase the quality and application potential of resulting data.

10. The level of effort of the researcher, assistant researcher and technical staff should be increased because the level proposed is on the low end of the range likely to be necessary to complete a project of the complexity and scale proposed.

Annex XIII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000382 (IRAN)
(paragraphs 178-186)

1. A more extensive review of available literature should be undertaken because much can be learned from previous modelling efforts. The development of a new oil spill model without taking advantage of pre-existing computer code is a redundant exercise, given the availability of several models capable of performing the kind of analysis proposed.

2. While the proposed hydrodynamic modelling efforts are appropriate, the flow patterns in the intertidal areas are not addressed. Modelling of the land/water boundary flows will be critical to determining the coastal oiling resulting from invasion-related releases.

3. Experts in the field of marine oil transport and fate modelling generally use the Lagrangian (particle-based) approach, which allows masses of various oil constituents to be tracked and weathered as they move through the environment. Given the study objectives, the Lagrangian approach would be more appropriate for this effort than an Eulerian (grid-based) approach.

4. Because oil components have varying physical, chemical and toxicological properties, it is inappropriate to treat oil as a single constituent in the modelling effort. A model that treats oil as a single constituent is likely to produce over-simplified results that ignore the differential transport and fate of specific oil components. To the extent that a multi-component analysis is done, information about specific constituents and concentrations present in Kuwait oil (and other source oil that was released into the Persian Gulf) should be collected. Such information could be obtained through an analysis of current samples of Kuwait (or other source) oil.

5. While the project's focus is on modelling oil released during Iraq's invasion and occupation of Kuwait, it may also be useful to model oil inputs occurring after Iraq's invasion, to the extent such information is available. This type of exercise might help clarify the extent to which oil observed as part of post-invasion field efforts is from the invasion-related spill or more recent oil inputs into the system.

6. The primary purpose of data collection should be to supplement available data on currents, temperature, salinity, water height, and similar types of physical characteristics. This information is essential for the hydrodynamics modelling effort. To determine oceanographic conditions at the time of Iraq's invasion and occupation of Kuwait, assumptions will

have to be made about how these factors have changed over time, and will need to be considered carefully.

7. The level of effort for modelling can be reduced because as proposed it does not take full advantage of existing models that could be used as a starting point for this project, and does not use staff/consultants with more expertise and familiarity with oil transport modelling. The project could be undertaken with 24 person-months of effort: i.e. nine person-months on the part of a hydrodynamic modeller to develop, calibrate, and validate a three-dimensional hydrodynamic model for the Persian Gulf using previously-developed model code; six person-months for the oil fates modelling, assuming reliance on previously-developed model code and experience in this field; and nine person-months for the associated data processing and visualisation of model inputs and outputs. Of these, 15 person-months of effort would require senior modellers, and the remaining nine months of effort would require more junior help.

8. The level of effort for field data collection can be reduced by 75 per cent. This should be sufficient to conduct smaller scale cruises targeted at collection of project-specific data and/or proportionally contribute to data collection costs of a much larger oceanographic cruise.

9. The software and hardware budget can be reduced by 50 per cent, to better reflect current prices and software/hardware needs. The largest component of the proposed software and hardware budget is for the commercial software FLUENT/FIDAP. This package solves fluid mechanics problems, but is not designed for use in surface water modelling involving "free surfaces" (i.e., changing water height). Thus, additional effort would be required to adapt this package. Other freeware codes are better designed for hydrodynamics problems, for example the Princeton Ocean Model. There are also many commercial hydrodynamic models available that would be more suitable and cost-effective.

Annex XIV

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000389 (IRAN)
(paragraphs 192-198)

1. Performing a more comprehensive survey of the entire shoreline using the SCAT (Shoreline Clean-up Assessment Team) method developed by the Governments of Canada and the United States should be considered. These survey methods use standard terms and techniques to assess the oil along the entire shoreline, rather than in limited transects. The results of this type of survey can support the creation of computer-generated maps showing the extent of pollution of the shoreline.

2. The project should collect additional data about potentially affected ecological communities at the sampling sites. Such information might include the presence of sensitive species, such as migratory birds or fish species, that may be adversely affected by remediation operations.

3. Some additional work should be performed to identify the impacts of oil pollution that resulted from Iraq's invasion and occupation of Kuwait. Although the Claimant states that an investigation of the coastal zone suggests that the oil pollution is primarily a result of Iraq's invasion and occupation of Kuwait, the methodology proposed is to determine the age of the tarballs (and thereby the source) by measuring their weight, density, and volume. This methodology partly addresses source identification issues but is less accurate than appropriate chemical fingerprinting analyses (e.g. gas chromatography/mass spectrometry analyses). Due to the array of other potential sources of oil in the Persian Gulf, conducting a more precise fingerprinting analysis would be appropriate.

4. The second part of the project (evaluating remedial options) would benefit from further refinement. In particular, the study needs to define more explicitly the potential remediation goals for the polluted shoreline. While multiple remediation goals are often appropriate when chosen to reflect site-specific circumstances, identification of potential clean-up goals is needed to evaluate the success of the field demonstrations of remediation technologies.

5. While a variety of treatment technologies should be considered during the initial identification and evaluation phase of this project, additional emphasis should be placed on narrowing the set of technologies through literature review and laboratory-scale testing processes. There is an extensive body of published literature on shoreline clean-up that should be exhaustively reviewed before conducting any laboratory or field tests. In addition, performing laboratory scale testing on some remedial

options, such as bioremediation, will allow the researchers to evaluate the technologies in a more cost-effective manner, and will facilitate the design of the field tests.

6. Additional remedial options should be explored. For example in situ treatment may be a more cost-effective and feasible option for some oil residues. Other remedial technology options to be considered include:

(a) Beach cleaning machines for the removal of viscous oil on sand beaches;

(b) Rock washers or mobile washing machines for stained sands;

(c) Mobile incinerators or rotary kilns developed in Canada for oiled sediments; and

(d) Separation of weathered oil particles from unoiled sediments by sieving.

The treatment technology assessment should be based on a matrix of candidate treatment techniques arrayed against oil residue types or substrate types. Additional options available for treating the recovered waste, such as recycling should also be considered (e.g. viscous oil-sediment residues for asphalt production).

7. The transportation expenses can be reduced. The remaining portion of the transportation budget should be used to perform chemical analysis of tarball and/or sediment samples. Such analyses can help better characterize shoreline pollution, determine the source of observed pollution, and provide information about the effectiveness of alternative remediation technologies.

Annex XV

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000383 (IRAN)
(paragraphs 199-204)

1. Samples should be collected from additional locations within the Shadegan Wetland. Given the vast size of the wetland, the proposed 50 sampling locations would provide a very limited basis for extrapolation. Sampling a variety of hydrologic habitats within the Shadegan Wetland might improve the project's ability to determine which hydrologic factors may be working to remove or bury the oil.

2. Consideration should be given to a variety of approaches to help discern the source of the oil pollution. The project indicates that nickel and vanadium ratios would be used to identify specific sources of the observed oil pollution. While this method can be used to discriminate between sources of oil, the project's ability to discriminate between oil sources may be enhanced by chemical fingerprinting analyses (e.g. gas chromatography/mass spectrometry analyses).

3. With respect to the identification and evaluation of potential remediation technologies, there is limited practical experience in remediating wetlands. Wetlands are sensitive habitats, and remediation is difficult and risky. Nevertheless, if oil pollution is found in the Shadegan Wetland, it would be appropriate to investigate the use of remediation technologies. However, the project should focus on investigating non-intrusive or biological processes for remediation.

4. Researchers working on this project should co-ordinate closely and share data and data collection efforts with those working on the Shadegan Wetland plant communities project (claim No. 5000344). At a minimum, co-ordination of soil sampling will improve the robustness of the proposed root-zone study. Sampling areas and information collected should be co-ordinated to maximize coverage within the Shadegan Wetland.

5. The reallocation of 10 to 15 per cent of the labour budget to fund the additional chemical analyses would improve the project's ability to meet the objectives. In addition, it may be possible to use one or two "Masters level" soil scientists, instead of one or two of the three "Ph.D. level" soil scientists proposed for the project.

Annex XVI

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000427 (IRAN)
(paragraphs 243-251)

1. To isolate growth-related trends from the natural variability in plant specific growth rates, the sample size should be expanded to approximately 30 to 40 samples per species per plot. The sample sizes proposed (i.e., four trees of each target species from each of 40 sample plots) are very small given the natural variation among different plants of the same species, and may not provide sufficient data to perform a robust statistical analysis. As a result, the amount of labour required for enzymatic analysis will need to be increased, perhaps by as much as a factor of two.

2. The project team should include an expert in dendrochronology when assessing the growth of forest trees. Such an individual should be well-versed in techniques inclusive of proper increment core collection and preparation and cross dating of increment cores. The award as recommended includes provision of a dendrochronograph, which is necessary for a temporal analysis of tree ring growth and scaling up to tree and stand growth determinations.

3. The proposed DNA analysis should be eliminated. A sample size of four individuals is far too small to determine whether any genetic differences among the individuals constitute mutational events or merely represent natural variation. In addition, single events (even if cataclysmic) seldom cause genetic losses in mixed forests - and even assuming that such a genetic loss had occurred, the affected individuals would likely have been so adversely affected that they would not be present today. As a result the amount of labour required can be reduced. This reduction is offset by the increase in the amount of labour for enzymatic analysis.

4. A number of other projects proposed by Iran involve work in soil chemistry and biology. To the extent possible, researchers should attempt to co-ordinate data collection and analysis among the various projects examining soil in affected and unaffected regions.

5. The project "Determining Natural Revegetation Potential of Affected Mangrove Forests of Iran Consequent to the Persian Gulf War" (claim No. 5000347) may offer particularly relevant opportunities for co-ordination in data collection and analysis. While the two projects generally focus on evaluating different types of damage to mangroves, co-ordination and integration would improve the robustness of conclusions regarding impacts on mangroves.

Annex XVII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000428 (IRAN)

(paragraphs 252-260)

Additional steps are needed to correlate pollution from the oil fires with adverse health effects on livestock.

1. The data collection in the first project phase should be expanded to include a control group from provinces not affected by pollution from the oil fires in Kuwait.
2. Similarly, additional historical data from the eight affected provinces should be sought to set appropriate baseline levels.
3. Any sampling for bioaccumulation should focus on animals from age groups older than ten years, and on organic pollutants found in crude oil and combustion products such as dioxins and polycyclic aromatic hydrocarbons.

Annex XVIII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000374 (KUWAIT)
(paragraphs 385-389)

1. A thorough characterization of pollutant source areas and pathways should be conducted prior to finalizing the treatment system. This should be followed by pollutant fate and transport modelling.

2. Information from unaffected control areas, or pre-invasion groundwater quality data, should be used as an aid in attempting to quantify any incremental degradation caused by Iraq's invasion and occupation of Kuwait.

3. Monitoring should include an evaluation of casing leaks from oil wells. Oil well logging would locate leaks and permit a more efficient design of a monitoring programme for the aquifers. The monitoring should take into account the monitoring of oil well casings undertaken in connection with claim No. 5000376.

4. Polyvinyl chloride ("PVC") piping should be substituted for stainless steel piping in the installation of wells. The use of PVC piping is more cost-effective than stainless steel. Further, the use of stainless steel in the monitoring wells could affect the integrity of samples recovered for heavy metal analysis (e.g. vanadium and nickel).

Annex XIX

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000376 (KUWAIT)
(paragraphs 396-401)

1. The programme proposes to recover soil samples from the deeper wells beneath the water table. However, because many of the hydrocarbon contaminants are probably situated at or near the zone of water table fluctuation, samples recovered from the saturated zone should not be analysed.

2. Well casing studies should be considered in addition to monitoring well studies. Individual oil well logging to detect casing failures is cost-effective and feasible in the course of oil production. It is common practice in oil fields to shut down wells for short periods of time to allow for inspections. Well logging could take place as part of this routine procedure. When performed in the vicinity of aquifers used for water supply, selected oil well logging is likely to yield immediate information about the integrity of the well casings which could provide enough information to conduct a scoping level investigation.

3. The programme proposes to install shallow depth wells next to deeper wells. Having a deep and a shallow well at the same location is a reasonable approach; however, it is not necessary to drill two separate wells as proposed. Instead, it is common practice to drill one well hole and to install two monitoring wells at the same location.

4. The level of soil and groundwater sampling and analysis should be reduced by 50 per cent, which would be sufficient to provide a geographic and temporal characterization of the potential area of impact.

5. It would be sufficient to conduct two sampling events per year instead of four, because of the general geology of the areas and the limited annual rainfall in Kuwait.

Annex XX

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000378 (KUWAIT)
(paragraphs 411-416)

1. It would be inappropriate to analyse subtidal sediment and water samples for volatile organic compounds ("VOCs"). Analysis of VOCs in these environmental media can be useful immediately after a spill; however, such analyses are unlikely to provide useful information ten years after the oil spill resulting from Iraq's invasion and occupation of Kuwait. By now VOCs resulting from the spills will have been stripped from water and from the seafloor by physical and biological processes.

2. It is appropriate to conduct fish bioassays to determine the effects of the oil spill on fish as on representative marine organisms. However, the number of proposed fish bioassays is excessive. Repeated annual analyses are unnecessary to account for impacts on different life stages of the target species. It would be appropriate to conduct this analysis twice in the first year of the project, as proposed, but not in subsequent years.

3. It is unnecessary to conduct fish VOC bioassays, as it is unlikely that fish are still being exposed to VOCs from the oil spill that occurred in 1991.

4. The current meter placement and retrieval cruises, including both vessel rental costs and the associated labour effort, should be eliminated. While it is reasonable to have current records that coincide with the other proposed sampling events, the sampling cruises should afford sufficient vessel time and manpower to deploy and retrieve the current meters at the proposed locations without requiring separate cruises for this purpose. However, the weekly current meter data retrieval effort is separate from the cruise, as proposed, and should be maintained as proposed.

Annex XXI

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000397 (KUWAIT)
(paragraphs 417-425)

1. The number and type of chemical analyses proposed should be reduced substantially. All samples should be analysed for total petroleum hydrocarbon, to permit the identification of areas of high, moderate and low contamination. However, a full set of chemical and physical analyses should be conducted only where there are questions about the source of contamination or where detailed knowledge of the nature and amount of the chemical constituents in the sediment might influence remediation approaches. Detailed chemical/physical analysis of 20 per cent of collected samples should thus be sufficient to meet study objectives.

2. The level of proposed labour (1,490 person-months for 3,456 transects) should be reduced accordingly. A three-person field team could collect 27 samples per day and perform the proposed qualitative biological inventory. This would only require a total of 189 person-months of effort and involve seven field teams, assuming a study of nine months duration. Each field team should be composed of one professional, two technicians and one researcher. The administration component should be reduced from 33.5 person-months to 18 person-months.

3. The biological assessment of shoreline habitat is an appropriate component of the project. This evaluation would provide qualitative information on habitat quality and species abundance and diversity that may be useful in conjunction with the results of the contamination analyses. However, experience from scientific surveys conducted by the Mt. Mitchell and other cruises indicates that no additional field time is necessary specifically to complete this task.

4. The survey mobilization component of the proposal would require 30 person-months for completion, rather than the approximately 101 person-months proposed. The 30 person-months should include one month per researcher for survey team planning (seven researcher months), two months per professional for technical preparation for the survey (14 professional months), one half month per technician for field training (seven technician months) and two months of administrative support.

5. The field transport component should be reduced to 14 vehicles (two per survey team) for nine months rather than the proposed 68 vehicles for eight months.

6. The number of Global Positioning System units should be reduced from 102 eight-channel units and four 12-channel units to fourteen 12-channel

units (two per field team). The number of rigid frame backpacks should be reduced from 102 to 32 (two per field person plus contingencies). The number of cellular phones should be reduced from 80 to 16 (two per field team and two at research headquarters).

Annex XXII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000398 (KUWAIT)
(paragraphs 426-433)

1. There is an extensive body of published literature on shoreline clean-ups that should be exhaustively reviewed before conducting any laboratory or field tests. Upon review of the literature and using the results of the oiled shoreline survey (claim No. 5000397), a small number of candidate technologies could be identified for each type of contaminated substrate.

2. Remediation goals should be more explicitly defined. Among other considerations, treatment technologies should be evaluated for their ability to remove sufficient contamination to meet clean-up targets. To the extent the pre-invasion baseline can be identified, this is one potentially useful clean-up target. Remediation goals can also be based on residual risks to ecological or human receptors, or on planned future uses of the injured resource. Multiple targets are often appropriate to reflect site-specific circumstances. Evaluating technology performance relative to multiple remediation standards would maximize the amount of information available for the remediation decision-making process.

3. The risks of remediation should be carefully considered. Intrusive remediation techniques, especially those involving soil excavation, will cause additional disturbance to sensitive soils. In some areas, the nature of residual contamination may be such that remediation poses a greater environmental risk than natural recovery.

4. The technology review should begin with a scoping effort, during which the relevant data from the oiled shoreline survey (claim No. 5000397) are reviewed in order to ascertain the locations and characteristics of remaining contamination. Using this information, a set of oil residue categories should be defined (e.g. weathered asphaltic oil on coarse sand beach, buried liquid oil in soft marshland soils, etc.) and the volume of oil and sediment in each category estimated. For most oil spills, the oiled shoreline can be described in four or five categories. However, because of the unprecedented scale of pollution caused by Iraq's invasion and occupation of Kuwait, ten distinct categories may be necessary.

5. The scientific literature should be reviewed to identify candidate treatment techniques for each oil residue category. Shoreline cleaning, oil residue treatment, and waste disposal have been studied extensively over the past several decades; a wealth of knowledge exists in the oil spill response community. The outcome of this review should be a matrix of candidate treatment technologies and the categories of oil residues

and substrate types, which could then form the basis of the technology assessment study design.

6. Recovery goals should be identified for each oil residue category, both in terms of effectiveness and efficiency. These goals will provide the yardstick for evaluating the success of alternative treatment technologies. The study design should include at least two technologies for each oil residue category, preferably one in situ and one ex situ.

7. Based on the results of the technology review, investigators should test selected technologies in the laboratory to better determine costs, feasibility, optimum operating parameters, etc. Total labour required for this Laboratory Bench Test phase is estimated at 24 person-months. This estimate provides for six trial tests of ten individual technologies, or 60 trials. Each trial will require two chemical analyses, one before the trial and one after. The total number of samples should be increased by ten per cent to account for analysis of replicate samples for quality control purposes.

8. Field testing should be performed only on technology/oil residue combinations that are reasonable candidates for remediation, given project feasibility, clean-up targets, costs, remediation risks and similar considerations. The Panel's cost estimate allows for tests of 1,000 cubic metres of contaminated materials for each technology/oil residue combination.

Annex XXIII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000432 (KUWAIT)
(paragraphs 451-464)

1. Although remote sensing is an appropriate and effective method for mapping the oil lake contamination, there is evidence that Kuwait has previously collected a considerable amount of remote sensing data on the oil lakes. Thus, it is likely that only one additional set of remote sensing data, including Landsat, SPOT-4, and microwave radar images is needed for the analysis. Additional remote sensing images should not be collected if the currently available data are sufficient for the task of mapping the current extent of the oil lakes.

2. "Ground-truthing" the results of the remote sensing evaluation is estimated to require 17 person-months. Assuming a five-person team, this corresponds to a rate of between three and four lakes surveyed per day. This should be sufficient to determine the area of the oil lakes, their boundaries, and the volume of contaminated soils to a reasonable degree of certainty and resolution.

3. The necessary data to estimate volumes of contaminated soil and risks to ecological receptors can be obtained with a reduced number of sample sites. A tiered sampling strategy should be considered, in which samples are initially collected at a relatively less intensive rate than that proposed. Subsequent sampling should focus on areas where the contamination exhibits the greatest spatial variability. Such a strategy would accomplish the objectives of the sampling task while minimizing costs.

4. The number and type of chemical analyses proposed should be reduced substantially, making use of the information gathered during the analysis of remote sensing data and field survey. Many lakes and pools will require only one or two sample locations to characterize the contamination, while others may require as many as ten. Assuming that one third of the lakes requires one sample, one third requires five samples and one third requires ten samples, approximately 1,300 sample locations for the 246 lakes would be required. Based on rates achieved during previous investigations of the oil lakes, two 5-person teams working for four months should be sufficient to collect this number of samples.

5. A full suite of analyses should be performed on only 25 per cent of the soil samples collected, with the remaining 75 per cent analysed for a proxy analyte such as total petroleum hydrocarbon ("TPH"). By performing TPH analysis on all samples, areas of high, moderate and low

contamination could be identified. Analysis of a full suite of parameters should be reserved for a much smaller subset of samples, where there are real questions about the source of identified contamination and/or where risk assessments or remediation decisions might be influenced by detailed knowledge of specific chemical concentrations in the soil.

6. Of the approximately 3,900 samples, one-third should be surface oil samples, while the remaining two-thirds should be soil samples (as originally proposed by Kuwait). Only 25 percent of surface oil samples require a full analysis of metal and petroleum qualities, while a TPH analysis is appropriate on the remaining 75 per cent of the samples. Every lake should receive at least one full analysis; the largest third of the lakes should receive two full analyses.

7. Kuwait has already developed a Geographic Information System ("GIS") for management of satellite imagery and mapping of the oil lakes; thus only the incremental costs of incorporating the additional information gathered by the studies in this claim into the existing system should be funded. Two professionals working full-time during the survey phase of the project and quarter-time during the two years of the technology assessment studies should be sufficient for both the oil lakes survey and the survey work carried out under Kuwait's other terrestrial monitoring and assessment claims. This labour effort can be divided evenly between this project and the tarcrete project (claim No. 5000434).

8. The scale of the treatment technology assessment is excessive. There is an extensive body of published literature on oil spill clean-up that should be exhaustively reviewed before conducting any laboratory or field tests. Upon review of the literature, and using the results of the monitoring programme, a small number of candidate technologies for each type of contaminated soil can be identified.

9. Much of the information generated during the treatment technology assessment for Kuwait's oiled shoreline (claim No. 5000398), will be directly applicable to the remediation of the oil lakes. Many of the oil residue and soil types present in the oil lakes and on the shoreline will be similar. Therefore, these two projects should be co-ordinated in order to avoid duplication of effort. Nevertheless, because additional types of soil and oil contamination probably exist in the upland desert environment of the oil lakes, additional work would probably be needed in all phases of the treatment technology assessment, from literature review and technology screening to full-scale field demonstrations. Conducting four additional full-scale field demonstrations, each processing 1,000 cubic metres of contaminated materials, should be sufficient for this purpose. These field demonstrations would require approximately 220 chemical analyses. This represents analysis of one sample for every 20

cubic metres of treated sediments, based on a total of 4,000 cubic metres of treated sediments, plus ten per cent for quality control.

10. For laboratory-scale testing, a limited number of trials (i.e., eight trials each of three treatment technologies) should be sufficient to support the selection and design of technologies for the field tests. Each trial would require two chemical analyses, one before the trial and one after.

11. Remediation goals should be more explicitly defined. Among other considerations, treatment technologies should be evaluated for their ability to remove sufficient contamination to meet clean-up targets. Although treating to achieve pre-invasion conditions is one potential goal, this may not be possible or necessary.

12. It is important to recognize that there was surface contamination in the oil field areas prior to Iraq's invasion and occupation of Kuwait. Thus, accurate baseline data would be necessary to characterize pre-invasion conditions. As an alternative, remediation goals could be chosen based on residual risks to ecological or human receptors, or on the planned future uses of the areas. Evaluating technology performance relative to multiple remediation standards would maximize the amount of information available for the remediation decision-making process.

13. The risks of remediation should be carefully considered. Intrusive remediation techniques, especially those involving soil excavation, will cause additional disturbance to sensitive desert soils. In most oil lake areas, the degree of contamination will probably make soil excavation unavoidable. However, in less contaminated areas, excavation may pose a greater environmental risk than natural recovery.

14. Overall, Kuwait should be able to complete the analysis, modified as described above, with a labour effort of approximately 370 person-months. This reflects 48 person-months for remote sensing and ground-truthing; 84 person-months for monitoring and chemical analysis; 18 person-months for GIS data management; 34 person-months for ecological risk assessment; and 186 person-months for the treatment technology assessment.

Annex XXIV

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000434 (KUWAIT)
(paragraphs 472-488)

1. Remote sensing is an appropriate and effective method for mapping tarcrete pollution over a large area. However, the collection of additional remote sensing images is unlikely to be needed for this project. In past studies, Kuwait has collected a considerable body of remote sensing data covering the affected areas; in addition, this project could make use of new images collected for other projects such as the oil lakes monitoring and assessment project. These images should be sufficient for the task of mapping the current extent of tarcrete pollution.

2. Because the tarcrete layer is distributed over a very large area, a tiered sampling strategy should be considered, in which samples are initially collected at a relatively less intensive rate. Subsequent sampling should focus on areas where the pollution exhibits the greatest spatial variability. Such a strategy would accomplish the objective of characterizing the physical and chemical characteristics of the tarcrete layer and risks to ecological receptors while minimizing costs.

3. The likely homogeneity of the tarcrete over large areas reduces the need for extensive sampling. Given the size of the contaminated area, approximately 500 locations should be sampled, with two samples collected at each.

4. A targeted approach to the design of the chemical sampling and analysis programme would provide a cost-effective strategy for accomplishing the environmental testing requirements of the proposed study. A full suite of analyses should be performed on only 20 per cent of the soil samples collected, with the remaining 80 percent of samples analysed for a proxy analyte such as total petroleum hydrocarbon ("TPH"). By performing TPH analysis on all samples, areas of high, moderate and low contamination could be identified. Analysis for all of the parameters listed in the Monitoring and Assessment Report filed as part of the claim should be reserved for a much smaller subset of samples, where there are real questions about the source of identified contamination and/or where risk assessments or remediation decisions might be influenced by detailed knowledge of specific chemical concentrations in the soil.

5. It is not necessary to conduct a technology assessment on the scale proposed because the technology assessments for the oiled shoreline and oil lakes will generate information relevant to tarcrete remediation. Conducting a full-scale treatment technology assessment for tarcrete is

likely to duplicate at least some of the work of those studies. A more limited evaluation of remediation technologies should be performed, taking into consideration the results of the "oiled shoreline" and oil lakes assessments (claim Nos. 5000398 and 5000432). Revegetation studies should be a major component of this effort.

6. Much of the information generated during the treatment technology assessment for Kuwait's "oiled shoreline" (claim No. 5000398) will be directly applicable to the remediation of the oil lakes. Many of the oil residue and soil types present in the oil lakes and on the shoreline will be similar. Therefore, these two projects should be co-ordinated in order to avoid duplication of effort. Nevertheless, because additional combinations of substrate and oil contamination likely exist in the tarcrete areas, additional work would be needed in all phases of the treatment technology assessment, from literature review and technology screening to full-scale field demonstrations. For this reason, two additional full-scale field demonstrations and a revegetation study are recommended.

7. For laboratory-scale testing, a limited number of trials (e.g. six trials each of three treatment technologies) should be sufficient to support the selection and design of technologies for the field tests. Each trial would require two chemical analyses, one before the trial and one after.

8. Remediation goals should be more explicitly defined. Among other considerations, treatment technologies should be evaluated for their ability to remove sufficient contamination to meet clean-up targets. Although treating to achieve pre-invasion conditions is one potential goal, this may not be possible or necessary.

9. It is important to recognize that there was surface contamination in the oil field areas prior to Iraq's invasion and occupation of Kuwait. Thus, accurate baseline data will be necessary to characterize pre-invasion conditions. As an alternative, remediation goals could be based on residual risks to ecological or human receptors, or on the planned future uses of the areas. Evaluating technology performance relative to multiple remediation standards would maximize the amount of information available for the remediation decision-making process.

10. The risks of remediation should be carefully considered. Intrusive remediation techniques, especially those involving soil excavation, will cause additional disturbance to sensitive desert soils. In some areas of tarcrete, the degree of contamination will likely make soil excavation unavoidable. However, in less contaminated areas, excavation may pose a greater environmental risk than natural recovery.

11. It should be possible to complete the study, modified as described above, with approximately 491.5 person-months of labour effort. This reflects

42 person-months for remote sensing and ground-truthing; 38.5 person-months for monitoring, sampling, and chemical analysis; 18 person-months for Geographic Information System data management; 22 person-months for ecological risk assessment; and 371 person-months for the treatment technology assessment.

Annex XXV

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000406 (KUWAIT)

(paragraphs 523-528)

1. It is not necessary to examine each subject every two years. The usefulness of the information developed would not be diminished if subjects were examined once every four years.

2. Consistency of clinical measurements across clinical locations will be critical if useful public health data are to be generated. Such consistency is difficult to achieve for key activities such as pulmonary function tests. Steps should be taken to ensure that consistency and quality control are a significant focus of the clinical monitoring programme.

3. Chest X-rays are not needed every four years (i.e., every second visit). Chest X-rays carry some incremental risk to subjects due to the radiation involved. The diagnostic value of relatively frequent X-rays does not outweigh this risk. Chest X-rays should therefore be taken less frequently than every four years as proposed.

4. Given that one of the stated objectives of the programme is to support the ongoing work of the Al-Riga Centre in Kuwait City on post-traumatic stress disorders ("PTSD") related to Iraq's invasion and occupation of Kuwait, adequate resources from the programme should be allocated to clinical monitoring of psychological and mental health effects, including PTSD. These can be identified relatively easily by a number of screening questionnaires that have been developed and used across different cultural settings.

Annex XXVI

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000361 (SAUDI ARABIA)
(paragraphs 561-568)

1. A statistically valid number of unpolluted (control) sites should be used to eliminate potential confounding factors (e.g. elevated water temperatures, other oil spills) that may have affected the reefs, and to identify impacts on the coral reefs that may have resulted from Iraq's invasion and occupation of Kuwait. Review of studies published after 1991, which indicate that certain Saudi Arabian reefs suffered virtually no damage from invasion-related pollution, would facilitate the selection of reference sites for the proposed coral reef surveys.

2. Data collected with pneumatic coring devices should be correlated with data on other parameters in order to identify and assess the importance of possible confounding factors. These other factors, which also tend to bleach coral, may include elevated water temperatures, sewage, variable weather patterns, and other oil spills.

3. Chemical fingerprinting of coral samples should be done using polynuclear aromatic hydrocarbon and n-alkane analysis. In conjunction with effects analyses, these chemical analyses may provide evidence of whether the invasion-related oil spill reached the coral reefs. Reference should be made to studies previously carried out in the Persian Gulf for additional details of appropriate technologies and analytical protocols for isolating this type of effect.

4. The number of transects should be reduced from 1,000 to a total of 600 over five years, which can provide adequate data to evaluate coral reef impacts. The number of coral core samples should be reduced by 40 per cent, because taking additional samples is unlikely to significantly increase the value of the information to be obtained and because the coring technique itself has the potential to excessively damage the corals during the sampling process.Due to the reduction in the number of transects, the total amount of labour envisaged for certain personnel on the project (coral reef specialist, coral reef geologist, phycologist, ichthyologist, Geographic Information System/Global Positioning System field technician, marine technician/boat operator, and divers) can be reduced by about one third.

References:

J.W., Readman, J.W., and others, "Discrete bands of petroleum hydrocarbons and molecular organic markers identified within massive coral skeletons", Marine Pollution Bulletin, vol. 32, No. 5, pp. 437-443 (1996).

N. Downing, and C. Roberts, "Has the Gulf War affected coral reefs of the northwestern Gulf", Marine Pollution Bulletin, vol. 27, pp. 149-156 (1993).

C.M. Roberts, N. Downing, and A.R.G. Price, "Oil on troubled waters: impacts of the Gulf War on coral reefs", Global Aspects of Coral Reefs: Health, Hazards and History, Conference proceedings, pp. 132-136 (Miami, Rosenstiel School of Marine and Atmospheric Sciences, 7-11 June, 1993).

Annex XXVII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000363 (SAUDI ARABIA)
(paragraphs 574-579)

1. The sampling analysis should be reduced by analysing 1,750 samples from each of the two initial cruises and 500 samples from each of the eight subsequent cruises. This would allow later analysis to be focused on species or geographic areas of concern that would be identified from analysis of initial sampling data.

2. Methods to isolate impacts related to Iraq's invasion and occupation of Kuwait should include the following: First, in at least one study, an increased concentration of pollutants along a gradient towards the known source of the oil spill resulting from Iraq's invasion and occupation of Kuwait has been clearly demonstrated (J. W. Readman and others, "Oil and combustion product contamination of the Gulf marine environment following the war", Nature, vol. 358, pp. 662-665 (1992)). The occurrence of the same trend, and a corresponding increase in impacts on biological communities a decade after Iraq's invasion and occupation of Kuwait would be at least indicative of persistence of invasion-related effects. Second, to the degree possible, background levels of oil in the Persian Gulf, which are known to be high, should be subtracted from total oil levels to obtain an approximation of oil levels originating from Iraq's invasion and occupation of Kuwait. Also if possible, information on background petroleum hydrocarbon levels for the sites to be assessed should be compiled for pre-invasion and post-invasion periods. Projections could then be made to obtain estimates of current background levels of petroleum hydrocarbons.

3. Inclusion of fishing grounds commonly used by commercial fishermen should be considered during sampling site selection, as this would enhance the usefulness of the data for evaluating risks from seafood consumption.

Annex XXVIII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000409 (SAUDI ARABIA)
(paragraphs 592-599)

1. The results of the visual shoreline survey referred to in claim No. 5000359 should be used to guide the distribution of transects and chemical analyses. The SCAT (Shoreline Clean-up Assessment Team) method, developed by the Governments of Canada and the United States, uses standard terms and techniques to assess the oil along the entire shoreline, rather than in limited transects. The results of this type of survey can support the creation of computer-generated maps showing the extent of pollution of the shoreline.

2. Control sites unaffected by pollution related to Iraq's invasion and occupation of Kuwait, such as areas south of Abu Ali, should be used to address the question of confounding sources of pollution.

3. A tiered sampling programme should be implemented. Total petroleum hydrocarbon analyses should be performed on all samples, to identify areas of high, moderate and low contamination. More complete chemical and physical analysis should be reserved for a few samples, where there is uncertainty about the source of contamination or where remediation decisions would be influenced by knowledge of constituent concentrations and their relative proportions in the sediment.

4. Field teams should be able to collect at least 27 samples per day, on average. Therefore, 12 three-person teams should be sufficient to collect the modified number of sediment samples, rather than the 23 teams proposed by the Claimant. The total work time for the field biologist and the technician, and related administrative support, can be reduced by half.

Annex XXIX

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000411 (SAUDI ARABIA)
(paragraphs 606-619)

1. The scale of the project should be reduced by selecting a small number of candidate technologies for testing on relevant combinations of oil residue and substrate identified in the oiled shoreline survey (claim No. 5000409). It will not be necessary to conduct a large-scale technology assessment in order to determine the most cost-effective remediation techniques for the "oiled shoreline". An extensive body of published literature exists on shoreline clean-up that should be exhaustively reviewed before conducting any laboratory or field tests. Having reviewed the literature, and using the results of the oiled shoreline survey, a small number of treatment technologies can be identified.

2. Evaluating technology performance relative to multiple remediation standards would maximize the amount of information available for the decision-making process.

Annex XXX

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000441 (SAUDI ARABIA)
(paragraphs 656-661)

1. Fifteen hundred plant tissue samples should be analysed in addition to the proposed analysis of 1,500 soil samples. Two indicator species of plants should be sampled at each of 750 sampling locations.

2. Plant and soil samples should be taken from the same locations to enhance comparability. Soil should be sampled at two depths.

3. Total petroleum-related hydrocarbon analyses should be performed on all soil and plant tissue samples to identify areas of high, moderate, and low contamination. Analysis for all of the parameters proposed could be reserved for a much smaller subset of samples, where there are real questions about the source of identified pollution or where risk assessment or remediation approaches might be influenced by detailed knowledge of chemical constituents and their relative proportions in the environment. For planning purposes, budgeting for detailed chemical/physical analysis of 300 samples each of soil and plant tissue is sufficient to meet study objectives.

4. One hundred groundwater samples should be collected for analysis, unless groundwater monitoring wells are already present in the affected area or it is confirmed that there are no likely exposure pathways. The full suite of proposed analyses on groundwater samples should be conducted due to the limited number of groundwater samples collected.

5. If any pre-invasion sampling data are available, such data should be used to establish an appropriate baseline against which currently observed conditions could be compared.

6. Staff time can be reduced substantially. The positions of deputy project manager, data management specialist, field biologist and technician are not necessary and can be eliminated. It should be sufficient to provide a half-time project manager for the duration of the study. The labour effort for the risk assessment specialist should be split between an arid lands ecologist/soil scientist and a plant physiologist/toxicologist. Each of these individuals is estimated to need a month of mobilization time, 25 per cent effort for the four-month field survey, four person-months of data analysis effort, and 100 per cent effort for two person-months of report writing. Three person-months each (two for data analysis and one for report writing) for an environmental chemist and a Geographic Information System ("GIS") specialist will allow for analysis of groundwater data and integration of study results with a centralized

GIS database. Six additional person-months of effort for the GIS specialist will allow for a remote sensing specialist to analyse remote sensing imagery in order to assess baseline conditions in the study area. Five person-months should be included for a Geographic Information System/Global Positioning System field technician, including mobilization and field survey time. The labour estimate also includes 26 person-months of effort for researchers, including one person-month of mobilization, four person-months of field survey effort, and eight person-months of data analysis for each of two individuals at 100 per cent effort. Three person-months of editor/report production continue for the entire project.

Annex XXXI

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000414 (SAUDI ARABIA)
(paragraphs 677-683)

1. The exposure registry, as proposed, would include only a small percentage of the persons who might have been exposed to the environmental and other health risks. A much larger number of households should be surveyed for inclusion in the exposure registry. In addition, an attempt should be made to refine the estimate of the number and locations of households that might have been affected. This could be done by the use of either ground-level air quality monitoring data or estimates of ground ambient concentrations.

2. Estimation of population exposures before, during, and immediately after Iraq's invasion and occupation of Kuwait will require estimates of outdoor air pollution concentrations in each household surveyed during the relevant periods. Analysis and interpolation of historic air quality monitoring data should be used to estimate pollution concentrations. To the extent that such data are incomplete or unavailable, air quality modelling or review of satellite images or other data should be used. Care should be taken in the analysis of satellite images, as the smoke plume often remained well above ground level.

3. A two-tier strategy should be employed for conducting the national survey. In the first tier, the population of specific areas of Saudi Arabia should be sampled more or less intensively depending on the number of days of ground level pollution exposure. Areas that experienced higher levels of pollution should be sampled more intensively than areas with lower pollution levels. All individuals with potential exposure greater than or equal to 50 days should be included in the national survey. (See table below for estimates of the number of people exposed to different numbers of days with smoke overhead). Areas with 25 to 50 days of smoke coverage should be sampled on a 25 per cent basis, that is one out of four households should be selected to participate in the initial national survey. Areas with less than 25 days of smoke coverage should be sampled on a ten per cent basis, that is one out of every ten households should be selected to participate in the initial national survey. As shown below, this calculation results in a total of 398,323 households to participate in the initial national survey.

Number of days with smoke overhead	Number of people	Number of households	Proportion sampled	Number of households sampled
> 100 days	1,251,391	171,423	100%	171,423
50 - 100 days	808,957	110,816	100%	110,816
25 - 50 days	3,055,403	418,548	25%	104,637
10 - 25 days	144,787	19,834	10%	1,983
< 10 days	690,835	94,635	10%	9,464
Total	5,951,373	815,256		398,323

4. In the second tier, a hierarchical interview strategy should be used, where each sampled household completes a simple screening questionnaire and only a subset of homes are asked to complete a more extensive questionnaire. Homes selected for detailed questions should be those with persons who were in exposed locations during the period of the oil fires.

5. Follow-up interviews should be conducted to ensure that exposures continue to be tracked over time and that health outcomes can be re-evaluated at intervals. This may be done as part of the proposed activities in claim No. 5000416 and claim No. 5000417.

6. Experts in clinical medicine, epidemiology, biostatistics, medical records systems, and survey research should be included.

Annex XXXII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000417 (SAUDI ARABIA)

(paragraphs 694-701)

1. The proposed sample size is derived in part from a desire to detect a disease with a mortality rate of one per 10,000. A disease such as chronic obstructive pulmonary disease, which has a mortality rate of two per 10,000, should be used instead. Therefore, the sample size should be reduced from 34,880 to 17,006 subjects.
2. The frequency of clinical examinations should be reduced from every two years to every four years.
3. The diagnostic value of relatively frequent chest X-rays should be evaluated, taking into account the incremental risk to subjects due to the radiation involved and the possibility that the risk may outweigh the diagnostic value.
4. Consistency of clinical measurements across clinical locations is critical to generate useful public health data. Therefore, consistency and quality control should be a significant focus of the clinical monitoring programme, particularly for key activities such as pulmonary function tests.
5. Screening questionnaires that have been developed and used across different cultural settings should be used to identify psychological and mental health effects of Iraq's invasion and occupation of Kuwait.
6. More experts in clinical medicine, epidemiology and bio-statistics should be included.

Annex XXXIII

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000418 (SAUDI ARABIA)
(paragraphs 702-706)

1. The survey instruments should be field tested to evaluate their effectiveness and to enable necessary refinements to be made to both the instruments and the proposed field survey procedures. One or more pre-tests should be performed, and this may require an extension of the duration of the study from 18 months to 24 or 36 months.

2. A formal statistical analysis should be conducted to refine the sample size. In choosing sample size, note should be taken of the fact that a substantial portion of the household samples may comprise children under age 11, who should not form part of the pre-invasion/post-invasion analysis

3. The external control approach would require data for a comparable population using the same or similar type of survey instrument as that proposed in the project. The comparison population should be selected from within Saudi Arabia itself, specifically from areas of the country that were less affected, or unaffected, by Iraq’s invasion and occupation of Kuwait. Post-invasion disease rates in this population should be compared with post-invasion disease rates in the exposed Saudi populations. Increased disease rates in the exposed population in comparison with the unaffected population could, in properly controlled statistical analyses, be attributed with reasonable confidence to the effects of Iraq's invasion and occupation of Kuwait.

Annex XXXIV

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000371 (SYRIA)
(paragraphs 737-741)

1. The project should be refocused as a screening-level assessment of damage in the areas where cultural artefacts are suspected to have been most directly affected by the oil fires in Kuwait. This assessment would use approximately 130 person-months of effort.

2. The assessment should focus on one or two areas that are identified as most likely to have been exposed to pollution from the fires, and on a single outdoor material, such as limestone or marble, that is sensitive to pollution.

3. Analyses should be conducted to determine the feasibility of using before-and-after comparison studies and fingerprinting studies to determine whether there is evidence suggesting that pollution from the oil fires caused damage to outdoor artefacts.

Annex XXXV

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000372 (SYRIA)
(paragraphs 742-747)

1. The project should be refocused as a screening-level assessment that could provide information for making an initial judgement on the possibility of groundwater pollution. This assessment would use approximately 100 person-months of effort.

2. Available scientific literature on air quality should be reviewed to identify potential areas of impact in Syria, and to locate studies or data that identify pollution from the oil fires in Kuwait, based on the presence of key marker pollutants.

3. A map should be constructed in order to show, first, land areas that are identified in the scientific literature on air quality as likely to have been affected by the oil fires and, second, aquifer characteristics that determine vulnerability to surface contamination, such as depth to the water table, soil type and thickness, and covering vegetation.

4. The map should be used to identify areas with a high probability of impact from the oil fires. "Control" locations that are outside this area should be identified. Control locations should have similar aquifer and other characteristics. Groundwater measurements should be used in these control areas, in combination with available pre-1991 groundwater data, if any. This would provide insights into possible incremental impacts resulting from the oil fires.

5. A sampling programme, using soil samples and groundwater samples from existing wells within the areas identified as high risk and within the control areas, should be conducted. These samples should be analysed for pollutants that could have resulted from the oil fires in Kuwait, including hydrocarbons and key markers, in order to determine whether pollution from the oil fires in Kuwait affected groundwater in Syria.

Annex XXXVI

SUGGESTED MODIFICATIONS TO CLAIM NO. 5000419 (SYRIA)

(paragraphs 762-768)

1. The project should be refocused as a screening-level assessment that would make it possible to detect, in time and at least cost, any increases in adverse health effects that could be linked to the oil fires in Kuwait. This assessment would use approximately 260 person-months of effort.

2. The project should focus on two or three areas of the country where exposure to air pollutants from the oil fires is known to have been severe, with two or three similar but less exposed areas to serve as control locations. Within these areas, data could be developed from a random sample of health centres (perhaps 10 to 20) and from hospitals. Data should be collected for the health effects that are most likely to have been caused by air pollutants, that have relatively short latency periods, and that are relatively easy to classify. This would help to minimize the effects that differences in record keeping at the various health centres could have on the results of the screening.

3. If adequate data on rates of respiratory and other related diseases are developed, an analysis should be undertaken to determine whether any significant increase in disease rates identified resulted from the oil fires and whether differences exist between the findings in the affected areas and those in unaffected control areas.

Annex XVII

Decision concerning the first instalment of F4 claims taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva*

The Governing Council,

Having received, in accordance with article 38 of the Provisional Rules for Claims Procedure ("the Rules"), the report and recommendations made by the panel of Commissioners concerning the first instalment of "F4" claims, covering 107 claims, 1/

1. Approves the recommendations made by the panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules, to approve the amounts of the recommended awards concerning the claims covered in the report. The aggregate amounts per country, based on the summary of the recommendations contained in paragraph 779 of the report, are as follows:

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Iran	24	15	40,838,883	17,007,070
Jordan	10	-	12,488,949	7,060,625
Kuwait	15	7	460,421,114	108,908,412
Saudi Arabia	17	6	462,607,200	109,584,660

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* Previously issued as document S/AC.26/Dec.132 (2001).

1/ The text of the report appears in document S/AC.26/2001/16 (annex XVI above).

Country	Number of claims recommended for payment	Number of claims not recommended for payment	Amount of compensation claimed (USD)	Amount of compensation recommended (USD)
Syrian Arab Republic	3	7	5,623,885	674,200
Turkey	-	1	3,770,300	nil
Total	69	36	985,750,331	243,234,967

3. Notes that no recommendations have been made at this stage for two claims referred to in paragraphs 288 to 290 and 558 to 560 of the report,

4. Decides that payment of the approved amounts to the successful environmental monitoring and assessment claims will be made in accordance with paragraph 1(e) of decision 100 (S/AC.26/Dec.100 (2000)),

5. Recalls that, bearing in mind the provisions of decision 18 (S/AC.26/Dec.18 (1994)), claimant Governments shall expeditiously distribute amounts received for successful claims to the entity responsible for conducting the environmental monitoring and assessment activities, pursuant to the agreed upon procedures, and shall provide information on such distribution as soon as possible,

6. Decides that, to ensure that funds are spent on conducting the environmental monitoring and assessment activities in a transparent and appropriate manner and that the funded projects remain reasonable monitoring and assessment activities, the "F4" panel of Commissioners is requested to issue procedural orders directing claimant Governments to submit periodic progress reports concerning the environmental monitoring and assessment projects to the panel. The panel, through the Executive Secretary, will therefore keep the Governing Council informed of such progress reports for any appropriate action that may be required,

7. Requests the Executive Secretary to provide a copy of the report to the Secretary-General, to the Government of the Republic of Iraq and to each respective Government.

Annex XVIII

Fourteenth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure*

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* Previously issued as document S/AC.26/2001/17.

Introduction

1. The present report identifies, pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules"), recommended corrections in the various claims categories since the thirteenth article 41 report (S/AC.26/2001/8). Chapter I of this report contains recommended corrections concerning claims in categories "A" and "C", where the panels of Commissioners have concluded their work. Chapter II contains recommended corrections concerning claims in categories "D" and "E", where panels of Commissioners continue their work. Finally, Chapter III of this report provides information concerning requests by claimants for corrections to approved awards under article 41 of the Rules, including a report of the secretariat's review to determine whether or not these requests warrant action under article 41.

I. RECOMMENDED CORRECTIONS CONCERNING CLAIMS IN CATEGORIES "A" AND "C"

A. Category "A" corrections

2. Recommendations for corrections to category "A" claims include the following kinds of corrections: duplicate claims; family to individual claims; individual to family claims; reinstatement of claims previously identified as duplicates; higher to lower amounts; lower to higher amounts; and change of submitting/responsible entity.

1. Duplicate claims

3. Since the thirteenth article 41 report, a total of two claims have been found to be duplicates of other claims awarded compensation in category "A". No compensation should have been awarded for these duplicate claims.

4. Accordingly, as set forth in table 1 below, it is recommended that the awards for these claims be corrected. Table 1 identifies the countries concerned, the instalments to be adjusted, the number of claims affected, and the amount of net effect of the adjustment on each instalment.

Table 1. Category "A" corrections: duplicate claims

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Jordan	Fifth	1	(5,000.00)
Pakistan	Special	1	(4,000.00)
Total		2	(9,000.00)

2. Family to individual claims

5. Two claims, one filed by Pakistan and one filed by the Russian Federation, originally filed as family claims have been found to be claims submitted by individuals. The awards for these claims should be reduced to awards appropriate to the proper status of the claims.

6. Accordingly, as set forth in table 2 below, it is recommended that the awards for these claims be corrected. Table 2 identifies the countries concerned, the instalments to be adjusted, the number of claims affected, and the amount of net effect of the adjustment on each instalment.

Table 2. Category "A" corrections: family to individual claims

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Pakistan	Fourth	1	(2,500.00)
Russian Federation	Fourth	1	(4,000.00)
Total		2	(6,500.00)

3. Individual to family claims

7. Seven claims submitted by the Russian Federation, originally identified as individual claims, have been found to be claims submitted on behalf of families. The awards for these claims should be increased to awards appropriate to the proper status of the claims.

8. Accordingly, as set forth in table 3 below, it is recommended that the awards to these claims be corrected. Table 3 identifies the country concerned, the instalments to be adjusted, the number of claims affected, and the amount of net effect of the adjustment on each instalment.

Table 3. Category "A" corrections: individual to family claims

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Russian Federation	First	1	4,000.00
Russian Federation	Sixth	6	24,000.00
Total		7	28,000.00

4. Reinstatement of claims previously identified as duplicates

9. One claim from the Philippines and one claim from Sri Lanka originally found to be duplicates should be reinstated since additional information received from these Governments shows that the claims were submitted by different individuals.

10. Accordingly, as set forth in table 4 below, it is recommended that the awards for these claims be adjusted to reflect the correct nature of the claims. Table 4 identifies the countries concerned, the instalments to be adjusted, the number of claims affected, and the amount of net effect of the adjustment on each instalment.

Table 4. Category "A" corrections: reinstatement of claims previously identified as duplicates

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Philippines	Sixth	1	4,000.00
Sri Lanka	Sixth	1	4,000.00
Total		2	8,000.00

5. Higher to lower amount

11. Decision 21 (S/AC.26/Dec.21 (1994)) of the Governing Council states that "any claimant who has selected a higher amount under category 'A' (US$4,000 or US$8,000) and has also filed a category 'B', 'C' or 'D' claim will be deemed to have selected the corresponding lower amount under category 'A'". Sixteen claims have been identified by the Government of Pakistan as having been filed for higher amounts in category "A" by claimants who also have claims in category "C".

12. Accordingly, as set forth in table 4 below, it is recommended that the award amounts for the sixteen claims be adjusted downward in accordance with decision 21. Table 5 identifies the country concerned, the instalments to be adjusted, the number of claims affected, and the amount of net effect of the adjustment on each instalment.

Table 5. Category "A" corrections: higher to lower amount

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Pakistan	Fourth	16	30,000.00
Total		16	30,000.00

6. Lower to higher amount

13. One claim from the Netherlands, which appeared to be filed for the lower amount, was manually amended to the higher amount by the claimant within the permitted time period; however, this amendment was not detected during data entry. Additional information submitted by the Government of the Netherlands has shown that the amendment was properly made and inadvertently excluded. The award should be revised to reflect the higher amount to which the claimant is entitled.

14. Accordingly, as set forth in table 6 below, it is recommended that the award amount for this claim be adjusted upward to the higher amount. Table 6 identifies the country concerned, the instalments to be adjusted, the number of claims affected, and the amount of net effect of the adjustment on each instalment.

Table 6. Category "A" corrections: lower to higher amount

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Netherlands	First	1	1,500.00
Total		1	1,500.00

7. Change of submitting/responsible entity

15. At the request of the claimant and with the agreement of the countries concerned, one claim, submitted by the Russian Federation and approved in the fourth instalment, should be transferred to Israel.

16. Accordingly, as set forth in table 7 below, it is recommended that this claim be transferred from the Russian Federation to Israel. Table 7 identifies, for each of the countries and for each of the instalments affected, the number of claims previously reported, the previous total award, the corrected number of claims, and the corrected total award.

Table 7. Category "A" corrections: change of submitting/responsible entity

Country	Instalment	Number of claims reported	Previous total award (USD)	Corrected number of claims	Corrected total award (USD)
Russian Federation	Fourth	2,022	9,004,000.00	2,021	8,996,000.00
Israel	Fourth	0	0.00	1	8,000.00

8. Summary

17. The recommended corrections concerning claims in category "A" for the first, fourth, fifth, sixth and special (Pakistan) instalments by country, and by instalment, are located in tables 1 to 6 of annex I to this report.

B. Category "C" corrections

18. Recommendations for corrections to category "C" claims include the following kinds of corrections: corrections arising from discrepancy between electronic and paper formats; and corrections arising from reinstatement of erroneously deducted amounts.

1. Corrections arising from discrepancy between electronic and paper formats

19. Miscellaneous recommendations for corrections to category "C" claims arise primarily from requests submitted by the Governments of Kuwait and Jordan for global reviews of approximately 2,700 category "C" claims. The reviews were requested because of concerns expressed by individual claimants in respect of specific loss elements where potentially inaccurate entries of data in the electronic claims may have adversely affected their award outcomes during the application of the "C" Panel's mass processing methodologies.

20. To assist the secretariat with these high-volume reviews, both Governments performed preliminary screening of requests by individuals, developed comprehensive lists of claim numbers in electronic format and provided the electronic lists to the Commission. Together with the Commission-assigned category "C" claim numbers, the lists included claimant identification and loss information taken from the paper claims submitted by the claimants.

21. The information provided electronically was compared to the information existing both in the corresponding paper and electronic versions of the claims submitted to the Commission. Corrections to awards are recommended for 613 category "C" claims as a result. The recommendations apply the "C" Panel's decisions, practice and methodologies relative to the respective losses and consider only the timely filed information in the Commission's versions of the claims.

22. The individual loss elements that most commonly prompted claimant concerns comprised income-related losses arising principally from employment ("C6-Salary") losses, but also from individual business ("C8-Business") losses, along with mental pain and anguish arising from the death of a spouse, child or parent ("C3-MPA"). Summaries of the "C" Panel's decisions relevant to these losses are found in the seventh instalment report (S/AC.26/1999/11) as follows: (a) paragraphs 249 to 282 for C6-Salary losses; (b) paragraphs 327 to 368 for C8-Business losses; and (c) paragraphs 174 to 177 for C3-MPA.

23. In addition to the high-volume claim reviews described above, several other Governments and international organizations requested reviews of category "C" claim awards on behalf of approximately 150 individuals. As a result, corrections are recommended to awards in 11 additional claims. As with the high-volume reviews, the majority of the correction recommendations for these claims also comprised income-related, i.e., C6-Salary and C8-Business, losses.

24. Accordingly, as set forth in table 8 below, it is recommended that the award amount for these claims be corrected. Table 6 identifies the countries and international organizations concerned, the instalments to be

adjusted, the number of claims affected, and the amount of net effect of the adjustment on each instalment.

Table 8. Category "C" corrections arising from discrepancy between electronic and paper formats

Country or international organization	Instalment	Number of claims affected	Amount of net effect (USD)
Canada	Sixth	1	15,818.00
Egypt	Fifth	2	20,574.77
	Seventh	1	111.89
Jordan	Second	34	201,056.28
	Fourth	19	209,676.67
	Fifth	71	641,370.14
	Sixth	185	2,584,212.35
	Seventh	91	983,927.21
Kuwait	Seventh	214	728,889.71
Lebanon	Second	1	35,244.02
Pakistan	Seventh	2	100,000
Sudan	Sixth	1	21,539.70
UNDP Kuwait	Sixth	1	12,413.98
UNRWA Gaza	Sixth	1	22,020.76
Total		624	5,576,855.48

2. Corrections arising from reinstatement of erroneously deducted amounts

25. One correction has been recommended to remedy a situation where compensation received from other sources was erroneously deducted from a claimant's award. The situation was discovered during the secretariat's transfer and verification of all category "C" claims data from the former database to the Commission's integrated database. The "C" Panel's decisions relating to the treatment of compensation received from other sources are set forth at paragraphs 84 to 88 of its sixth instalment report (S/AC.26//1998/6) and paragraphs 78 to 83 of its seventh instalment report (S/AC.26/1999/11).

26. Accordingly, as set forth in table 9 below, it is recommended that the award amount for this claim be increased to accord with the "C" Panel's decisions. Table 9 identifies the country concerned, the instalment to be

adjusted, the number of claims affected, and the amount of net effect of the adjustment on the instalment.

Table 9. Category "C" corrections arising from reinstatement of erroneously deducted amounts

Country	Instalment	Number of claims affected	Amount of net effect (USD)
United Kingdom	Seventh	1	3,500.00
Total		1	3,500.00

3. Summary

27. The recommended corrections concerning claims in category "C" for the second, fourth, fifth, sixth and seventh instalments by country or international organization, and by instalment, are located in tables 1 to 6 of annex II to this report.

II. RECOMMENDED CORRECTIONS CONCERNING CLAIMS IN CATEGORIES "D" AND "E"

A. Category "D" corrections

28. Recommended corrections to category "D" claims are included in the report and recommendations of the "D1" panel of Commissioners concerning part one of the ninth instalment of category "D" claims (S/AC.26/2001/R.8), which is scheduled to be considered by the Governing Council during its fortieth session. The corrections proposed by the "D1" panel of Commissioners are as follows.

1. Third instalment correction

29. One claim that was approved in the third instalment requires correction, as an award for claimant's D4 (motor vehicle) losses was inadvertently excluded.

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Canada	Third	1	82,354.67
Total		1	82,354.67

2. Part one of the fourth instalment correction

30. One claim approved in part one of the fourth instalment requires correction as the claimant made claims for separate and distinct employment losses in category "C" and in category "D", but due to a computational error the claimant's C6 (loss of salary) award was deducted from his D6 (loss of salary) award.

Country	Instalment	Number of claims affected	Amount of net effect (USD)
Jordan	Fourth (part one)	1	6,264.72
Total		1	6,264.72

3. Fifth instalment corrections

31. One claim approved in the fifth instalment requires correction as a consequence of an article 41 correction applied to the related category "C" award. The original category "C" award was deducted from the award for a related loss in category "D". The article 41 correction to the category "C" claim requires that a revision be made to the award for the related loss in category "D".

Country	Instalment	Number of claims affected	Amount of net effect (USD)
India	Fifth	1	16,903.83
Total		1	16,903.83

32. Another claim approved in the same instalment requires correction due to a typographical error whereby the amount claimed was inserted instead of the amount recommended.

Country	Instalment	Number of claims affected	Amount of net effect (USD)
India	Fifth	1	(1,991.06)
Total		1	(1,991.06)

4. Changes to submitting entity reports by instalment

33. Pursuant to the corrections noted above in paragraphs 28-32, the changes to the submitting entity awards by instalment are as follows:

Submitting Entity	Instalment	Previous recommended award (USD)	Corrected recommended award (USD)
Canada	Third	252,031.36	334,386.03
Jordan	Fourth (part one)	1,857,575.62	1,863,840.34
India	Fifth	5,101,591.40	5,116,504.17

5. Summary

34. The recommended corrections concerning claims in category "D" for the third, fourth (part one) and fifth instalments by country, and by instalment, are located in tables 1 to 4 of annex III to this report.

B. Category "E" correction

35. A recommended correction in category "E" concerns a claim that was included in the report and recommendations of the panel of Commissioners concerning the twelfth instalment of category "E4" claims (S/AC.26/2001/4), which recommendations were approved by the Governing Council at its thirty-ninth session in decision 118 (S/AC.26/Dec.118 (2001)).

36. The correction concerns a typographical error in annex I of the report. The amount of recommended compensation for a claim filed by Jassim Abdulwahab and Partner Co. W.L.L. (UNCC claim number 4004201) was correctly reported in Kuwaiti dinars, but was incorrectly stated in United States dollars. The United States dollar amount for that claim should be corrected from USD 795,726.00 to USD 495,726.00. The total amount of recommended compensation for all of the twelfth instalment claims was correctly stated in United States dollars, such that the typographical error had no effect on the total amount of compensation awarded by the Governing Council in decision 118.

III. REQUESTS BY CLAIMANTS FOR ARTICLE 41 CORRECTIONS

37. During the period under review, the secretariat has received requests for corrections under article 41 of the Rules. The requests are as follows:

(a) On 14 March 2001, the Permanent Mission of the Republic of Poland in Geneva requested reconsideration of Governing Council decision 104 (S/AC.26/Dec.104 (2000)) and the associated report and recommendations of the "E3A" panel of Commissioners concerning the tenth instalment of "E3" claims (S/AC.26/2000/18) with regard to one Polish company;

(b) On 3 April 2001, the Permanent Mission of Luxembourg in Geneva wrote to the secretariat requesting reconsideration of Governing Council decision 82 (S/AC.26/Dec.82 (1999)) and the corresponding report and recommendations of the "E2" Panel of Commissioners concerning the third instalment of "E2" claims (S/AC.26/1999/22) with regard to one company of Luxembourg; and

(c) On 3 April 2001, the Permanent Mission of the Kingdom of Morocco in Geneva wrote to the secretariat requesting reconsideration of Governing Council decision 105 (S/AC.26/Dec.105 (2000)) and the corresponding report and recommendations of the "E3" panel of Commissioners concerning the fourteenth instalment of "E3" claims (S/AC.26/2000/19) with regard to one Moroccan company.

38. With regard to the requests filed by the Governments of Poland and Luxembourg, the secretariat's review of the specific claims in question and consultations with the respective panels of Commissioners remain ongoing.

39. With regard to the request filed by the Government of Morocco, the secretariat has requested that the document enclosed with the request, prepared by the claimant company and containing the substance of the article 41 contentions, be submitted in English as required under the Rules.

Annex I

RECOMMENDED CORRECTIONS CONCERNING CATEGORY "A" CLAIMS

1. Based on the recommended corrections reported in paragraphs 2 to 17 of this report, supra, the category "A" claims aggregate corrected awards by instalment, per country, are as follows:

Table 1. First instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Netherlands	497,000.00	498,500.00
Russian Federation	2,880,000.00	2,884,000.00

Table 2. Fourth instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Israel	0.00	8,000.00
Pakistan	22,613,500.00	22,581,000.00
Russian Federation	9,004,000.00	8,992,000.00

Table 3. Fifth instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	17,213,500.00	17,208,500.00

Table 4. Sixth instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Philippines	60,714,500.00	60,718,500.00
Russian Federation	3,392,000.00	3,416,000.00
Sri Lanka	35,555,000	35,559,000

Table 5. Special instalment of category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Pakistan	2,554,500.00	2,550,500.00

2. Based on the above corrections, the revised category "A" claim total recommended awards by instalment are as follows:

Table 6. Recommended corrected total awards for category "A" claims

Instalment	Previous total award (USD) a/	Corrected total award (USD)
First	189,579,000.00	189,584,500.00
Fourth	732,605,000.00	732,568,500.00
Fifth	782,628,000.00	782,623,000.00
Sixth	315,376,000.00	315,408,000.00
Special (Pakistan)	2,554,500.00	2,550,500.00

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a/ The previous total award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38, 67 and 101 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996), S/AC.26/Dec.67 (1999) and S/AC.26/Dec.101 (2000)), and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95, 99, 109, 113 and 122 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), S/AC.26/Dec.79 (1999), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000), S/AC.26/Dec.109 (2000), S/AC.26/Dec.113 (2000) and S/AC.26/Dec.122 (2001).

Annex II

RECOMMENDED CORRECTIONS CONCERNING CATEGORY "C" CLAIMS

1. Based on the recommended corrections reported in paragraphs 18 to 27 of this report, supra, the category "C" claims aggregate corrected awards by instalment, per country, are as follows:

Table 1. Second instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	39,021,196.59	39,222,252.87
Lebanon	26,622,550.73	26,657,794.75

Table 2. Fourth instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	24,391,714.04	24,601,390.71

Table 3. Fifth instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Egypt	86,189,253.95	86,209,828.72
Jordan	94,656,247.13	95,297,617.27

Table 4. Sixth instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Canada	9,404,478.30	9,420,296.30
Jordan	181,792,145.37	184,376,357.72
Sudan	21,752,650.13	21,774,189.83
UNDP Kuwait	10,435,819.73	10,448,233.71
UNRWA Gaza	2,579,883.53	2,601,904.29

Table 5. Seventh instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Egypt	231,246,647.69	231,246,759.58
Jordan	282,081,956.56	283,065,883.77
Kuwait	788,169,338.64	788,898,228.35
Pakistan	74,516,436.77	74,616,436.77
United Kingdom	28,876,154.87	28,879,654.87

2. Based on the above corrections, the revised category "C" claim total awards by instalment are as follows:

Table 6. Recommended corrected total awards for category "C" claims

Instalment	Previous total award (USD) a/	Corrected total award (USD)
Second	431,744,251.33	431,980,551.63
Fourth	654,598,151.73	654,807,828.40
Fifth	735,451,980.54	736,113,925.45
Sixth	765,713,687.98	768,369,692.77
Seventh	1,932,668,679.87	1,934,485,108.68

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a/ The previous total award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.70 (1999)), and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85, 95, 99, 113 and 122 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000)), and S/AC.26/Dec.99 (2000), S/AC.26/Dec.113 (2000) and S/AC.26/Dec.122 (2001)).

Annex III

RECOMMENDED CORRECTIONS CONCERNING CATEGORY "D" CLAIMS

1. Based on the recommended corrections reported in paragraphs 28 to 34 of this report, supra, the category "D" claims aggregate corrected awards by instalment, per country, are as follows:

Table 1. Third instalment category "D" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Canada	252,031.36	334,386.03

Table 2. Fourth instalment (part one) category "D" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	1,857,575.62	1,863,840.34

Table 3. Fifth instalment category "D" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
India	5,101,591.40	5,116,504.17

2. Based on the above corrections, the revised category "D" claim total awards by instalment are as follows:

Table 4. Recommended corrected total awards for category "D" claims

Instalment	Previous total award (USD)	Corrected total award (USD)
Third	11,693,746.00	11,776,101.00
Fourth (part one)	76,389,936.00	76,396,200.00
Fifth	45,865,923.00	45,880,836.00

Annex XIX

Decision concerning corrections pursuant to article 41 of the Provisional Rules for Claims Procedure taken by the Governing Council of the United Nations Compensation Commission at its 109th meeting, held on 21 June 2001 at Geneva[*]

The Governing Council,

Having received, in accordance with article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) ("the Rules"), a report by the Executive Secretary concerning recommended corrections in claims categories "A", "C", "D" and "E", 1/

Decides, pursuant to article 41 of the Rules, to correct the amounts of the approved awards for Governments and international organizations with respect to claims in categories "A", "C" and "D". 2/ The aggregate corrected amounts per country and instalment are as follows:

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[*] Previously issued as document S/AC 26/Dec 133 (2001).

1/ The text of the report appears in document S/AC 26/2001/17 (annex XVIII above).

2/ In conformity with the provisions on confidentiality in the Rules (articles 30, paragraph 1, and 40, paragraph 5), a table containing the breakdown of the corrected amounts to be paid to each individual claimant will not be made public, but will be provided to each respective Government and international organization separately.

Table 1. First instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Netherlands	497,000.00	498,500.00
Russian Federation	2,880,000.00	2,884,000.00

Table 2. Fourth instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Israel	0.00	8,000.00
Pakistan	22,613,500.00	22,581,000.00
Russian Federation	9,004,000.00	8,992,000.00

Table 3. Fifth instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	17,213,500.00	17,208,500.00

Table 4. Sixth instalment category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Philippines	60,714,500.00	60,718,500.00
Russian Federation	3,392,000.00	3,416,000.00
Sri Lanka	35,555,000	35,559,000

Table 5. Special instalment of category "A" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Pakistan	2,554,500.00	2,550,500.00

Table 6. Second instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	39,021,196.59	39,222,252.87
Lebanon	26,622,550.73	26,657,794.75

Table 7. Fourth instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	24,391,714.04	24,601,390.71

Table 8. Fifth instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Egypt	86,189,253.95	86,209,828.72
Jordan	94,656,247.13	95,297,617.27

Table 9. Sixth instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Canada	9,404,478.30	9,420,296.30
Jordan	181,792,145.37	184,376,357.72
Sudan	21,752,650.13	21,774,189.83
UNDP Kuwait	10,435,819.73	10,448,233.71
UNRWA Gaza	2,579,883.53	2,601,904.29

Table 10. Seventh instalment category "C" claims corrections

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Egypt	231,246,647.69	231,246,759.58
Jordan	282,081,956.56	283,065,883.77
Kuwait	788,169,338.64	788,898,228.35
Pakistan	74,516,436.77	74,616,436.77
United Kingdom	28,876,154.87	28,879,654.87

Table 11. Third instalment category "D" claims correction

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Canada	252,031.36	334,386.03

Table 12. Fourth instalment (part one) category "D" claims correction

Country or international organization	Previous total award (USD)	Corrected total award (USD)
Jordan	1,857,575.62	1,863,840.34

Table 13. Fifth instalment category "D" claims correction

Country or international organization	Previous total award (USD)	Corrected total award (USD)
India	5,101,591.40	5,116,504.17

Decides also that, based on the above corrections, the corrected total awards by instalment are as follows:

Table 14. Corrected total awards for category "A" claims

Instalment	Previous total award (USD) a/	Corrected total award (USD)
First	189,579,000.00	189,584,500.00
Fourth	732,605,000.00	732,568,500.00

Instalment	Previous total award (USD) a/	Corrected total award (USD)
Fifth	782,628,000.00	782,623,000.00
Sixth	315,376,000.00	315,408,000.00
Special (Pakistan)	2,554,500.00	2,550,500.00

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a/ The previous total award amounts in this column include the initial awards approved by the Governing Council in its decisions 22, 28, 29, 31, 33, 38, 67 and 101 (S/AC.26/Dec.22 (1994), S/AC.26/Dec.28 (1995), S/AC.26/Dec.29 (1995), S/AC.26/Dec.31 (1995), S/AC.26/Dec.33 (1995), S/AC.26/Dec.38 (1996), S/AC.26/Dec.67 (1999) and S/AC.26/Dec.101 (2000)) and subsequent corrections approved by the Governing Council in its decisions 42, 44, 51, 54, 57, 71, 79, 85, 95, 99 and 109 (S/AC.26/Dec.42 (1997), S/AC.26/Dec.44 (1997), S/AC.26/Dec.51 (1998), S/AC.26/Dec.54 (1998), S/AC.26/Dec.57 (1998), S/AC.26/Dec.71 (1999), S/AC.26/Dec.79 (1999), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000), S/AC.26/Dec.109 (2000), and S/AC.26/Dec.122 (2001)).

Table 15. Corrected total awards for category "C" claims

Instalment	Previous total award (USD) a/	Corrected total award (USD)
Second	431,744,251.33	431,980,551.63
Fourth	654,598,151.73	654,807,828.40
Fifth	735,451,980.54	736,113,925.45
Sixth	765,713,687.98	768,369,692.77
Seventh	1,932,668,679.87	1,934,485,108.68

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a/ The previous total award amounts in this column include the initial awards approved by the Governing Council in its decisions 25, 36, 37, 39, 41, 52 and 70 (S/AC.26/Dec.25 (1994),(S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996), S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998) and S/AC.26/Dec.70 (1999)) and subsequent corrections approved by the Governing Council in its decisions 39, 41, 52, 85, 95 and 99 (S/AC.26/Dec.39 (1996), S/AC.26/Dec.41 (1997), S/AC.26/Dec.52 (1998), S/AC.26/Dec.85 (1999), S/AC.26/Dec.95 (2000), S/AC.26/Dec.99 (2000), S/AC.26/Dec.113 (2000) and S/AC.26/Dec.122 (2001)).

Table 16. Corrected total awards for category "D" claims

Instalment	Previous total award (USD)	Corrected total award (USD)
Third	11,693,746.00	11,776,101.00
Fourth (part one)	76,389,936.00	76,396,200.00
Fifth	45,865,923.00	45,880,836.00

Decides further, pursuant to article 41 of the Rules, to correct the Report and recommendations made by the panel of Commissioners concerning the twelfth instalment of "E4" claims (S/AC.26/2001/4) as follows:

Annex I, column 7 (Amount recommended (USD)),

The entry for UNSEQ claim No. E-01083 should read 495,726.